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THE JUSTICE of the PEACE, AND PARISH OFFICER.

By RICHARD BURN, L.L.D.

One of his MAJESTY's Juſtices of the Peace for the County of WESTMORLAND.

The ELEVENTH EDITION.

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Popery.

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I. General obſervations.

1. IT is to be obſerved in general, that popiſh recuſants are liable to all the forfeitures and diſabilities, and other inconveniencies, to which other recuſants are liable; and to many others, to which other recuſants are not liable.

For to be a *recuſant*, doth not neceſſarily imply the being a *papiſt*: But a *recuſant* is any perſon who refuſes to go to church, and worſhip God, after the manner of the church of *England*: A *popiſh recuſant*, is a papiſt who ſo refuſeth: And a *popiſh recuſant convict*, is a papiſt legally convicted thereof. For the want of attending to which diſtinction, divers authors who have treated of this ſubject, have fallen into confuſion.

2. There are ſeveral ſtatutes made againſt recuſants in Q. *Elizabeth*'s reign, and the former part of the reign of K. *James* the firſt, which are not reſtrained to popiſh recuſants only; but as there were few or no other recuſants but papiſts at that time, they have regard chiefly to perſons of that profeſſion: and therefore they are inſerted under this title: although the words of them do extend, and the act of toleration ſuppoſes them to extend, to all nonconformiſts in general. But the force of them as to proteſtants diſſenters is taken away by that act. But no papiſt, or popiſh recuſant, ſhall have any benefit by the act of toleration.

3. The reader will obſerve from the dates of the ſeveral acts, how the penalties have from time to time been inforced and inlarged, upon every freſh attempt againſt the government; eſpecially at the ſeveral periods during Q. *Elizabeth*'s

Q. *Elizabeth*'s reign, after the powder plot in the reign of K. *James* the firſt, and after the rebellion in 1715. One of the acts particularly, immediately after the powder plot, which will often occur in the following ſections, is, in the ſtatutes at large, a well penned act. It is much in the ſtyle of lord *Coke*; ſtrong, and clear: where though many words are uſed, yet none of them can be wanted. And probably it was drawn up by him. It brings the ſeveral laws together, which had been enacted on the ſubject it treats of; and renders them all uſeleſs and dead, as much as if it had repealed them in expreſs words. And it may be a pattern in reducing into one general law, the ſeveral ſtatutes which on many heads are now become very numerous, and not a little confuſed.

4. In peruſing this whole title, wherein the laws againſt papiſts are brought clearly together in one view, it will occur poſſibly to remark, that they are many, and perhaps ſevere. But it ought to be conſidered withal, how proteſtants are treated in popiſh countries; and that the offences intended to be guarded againſt by theſe laws, are not the ſtealing of an ox, or the burning of an houſe, or any other invaſion of private property, but dethroning the prince, and overturning the government.

'Tis true, theſe laws in the preſent age have been permitted to ſleep in a great meaſure, and that even at a time when a rebellion was advancing, and a foreign invaſion attempted in favour of a popiſh prince and government: but they are ſuffered nevertheleſs to continue in force; perhaps that it may appear to the enemies of our conſtitution, that if they are ſpared, it is not for want of power, but of inclination to puniſh.

II. Popiſh ſupremacy oppoſed and aboliſhed.

1. Whoever ſhall affirm, that the king hath not the ſupreme authority in cauſes eccleſiaſtical, ſhall be excommunicated *ipſo facto*, and not reſtored but by the archbiſhop on his repentance. *Can.* 2.

2. By the ſtatute of the 27 *Ed.* 3. *ſt.* 1. *c.* 1. which is called the ſtatute of proviſors; perſons ſuing in a foreign realm, or impeaching judgment given in the king's court, ſhall incur a præmunire; that is, ſhall have a day given to appear in perſon to anſwer to the contempt, and if they come not, they ſhall be out of the king's protection, their lands and goods ſhall be forfeited, and their bodies impriſoned, and ranſomed at the king's will.

And if any bring into the realm a ſummons or excommunication againſt any one executing the ſtatute of proviſors, he ſhall ſuffer pain of life and member. 13 *R.* 2. *ſt.* 2. *c.* 3.

3. And by the 5 *El. c.* 1. If any perſon ſhall maintain the authority of the ſee of *Rome* in this realm, he ſhall incur a præmunire for the firſt offence, and for the ſecond ſhall be guilty of high treaſon. Proſecution to be within a year. And the juſtices in ſeſſions may enquire thereof, and ſhall certify the ſame into the king's bench. *ſ.* 2, 3, 4, 10, 11.

4. And if any perſon ſhall put in practice to abſolve or withdraw any ſubjects from their allegiance, or if any perſon ſhall be willingly ſo abſolved or withdrawn; he his aiders and maintainers ſhall be guilty of high treaſon. The trial to be at the aſſizes, or in the king's bench. 3 *J.* *c.* 4. *ſ.* 22, 23, 25.

III. Concerning the pope's preſentation to benefices.

1. No perſon by authority from the court of *Rome*, ſhall diſturb any perſon of the holy church, preſented or collated by the king or his ſubjects; on pain of fine and impriſonment. 25 *Ed.* 3. *ſt.* 6.

2. None ſhall take any benefice of an alien, or convey money to him for the farm thereof; on pain of incurring a præmunire. 3 *R.* 2. *c.* 3.

3. No alien ſhall purchaſe or occupy a benefice in *England*; on pain of a præmunire. 7 *R.* 2. *c.* 12.

4. He that ſhall go out of the Realm, to procure a benefice, ſhall be out of the king's protection; and the ſame ſhall be void. 12 *R.* 2. *c.* 15.

5. If any perſon ſhall accept a benefice from the pope, he ſhall be baniſhed for ever, and his lands and goods forfeited. 13 *R.* 2. *ſt.* 2. *c.* 2.

6. No proviſion of a benefice not vacant, made by the pope, and licenſed by the king, ſhall be available; but perſons endeavouring to exclude the incumbent thereby, ſhall incur a præmunire. 7 *H.* 4. *c.* 8. 3 *H.* 5. *ſt.* 2. *c.* 4.

IV. Bringing bulls and other inſtruments from Rome.

1. By the ſtatute of the 16 *R.* 2. *c.* 5. (which is the famous ſtatute called the ſtatute of præmunire) If any perſon ſhall purchaſe, or bring into the realm, any bulls or inſtruments

ments from *Rome*, or elſewhere, they ſhall incur a præmunire: that is to ſay, they ſhall be put out of the king's protection; and their lands and goods ſhall be forfeit to the king; and they ſhall be attached by their bodies, if they may be found, and brought before the king and his council, there to anſwer; or elſe proceſs ſhall be awarded againſt them by *præmunire facias* (ſo called from thoſe words in the writ).

2. But by a ſubſequent ſtatute, if any perſon ſhall get or publiſh any bull or inſtrument from *Rome*, he ſhall be guilty of high treaſon. And his aiders and comforters ſhall incur a præmunire. And concealing the ſame ſhall be miſpriſion of high treaſon. 13 *El. c.* 2. *ſ.* 3, 4, 5. And the juſtices of the peace may inquire thereof, within a year and day. 23 *El. c.* 1. *ſ.* 8.

V. Popiſh books and relicks.

1. If any perſon ſhall *have in his cuſtody* any books called antiphoners, miſſals, grailes, proceſſionals, manuals, legends, pies, portuaſſes, primers in *Latin* and *Engliſh* (except thoſe ſet out by K. *H.* 8.) couchers, journals, ordinals, or other books for the ſervice of the church, not ſet forth by the king; he ſhall forfeit for the firſt offence 20 s. for the ſecond 4 l. and for the third ſhall be impriſoned at the king's will. And the juſtices of the peace in their general ſeſſions may hear and determine the ſame. 3 & 4 *Ed.* 6. *c.* 10.

2. No perſon ſhall *bring from beyond the ſeas*, nor ſhall *print*, *ſell*, or *buy* any popiſh primers, ladies pſalters, manuals, roſaries, popiſh catechiſms, miſſals, breviaries, portals, legends and lives of ſaints, containing ſuperſtitious matter, printed or written in any language whatſoever; nor any other ſuperſtitious book printed or written in *Engliſh*; on pain of 40 s. one third to the king, one third to him who ſhall ſue in any court of record, and one third to the poor of the pariſh where ſuch books ſhall be found; and the books to be burned. 3 *J. c.* 5. *ſ.* 25.

3. If any perſon ſhall *bring into the realm* any agnus dei, croſſes, pictures, beads, or ſuch like vain and ſuperſtitious things, from the biſhop of *Rome*, or any authoriſed by him to conſecrate the ſame, and offer them to any perſon to be worn or uſed; both the bringer and receiver ſhall incur a præmunire: But if the receiver

ſhall in one day's time deliver the ſame to a juſtice of the peace, or if ſuch perſon to whom the ſame is offered ſhall carry the bringer before the next juſtice, or (if he cannot) ſhall diſcloſe the offender's name and place of abode or reſort, to the biſhop, or to a juſtice of the peace, he ſhall not incur ſuch præmunire. And in ſuch caſe, the juſtice in 14 days ſhall ſignify the ſame to one of the privy council, on pain of incurring a præmunire. 13 *El. c.* 2. *ſ.* 7, 8, 10.

4. And two juſtices of the peace (and mayors and other chief officers in corporations) may *ſearch* the houſes and lodgings of every popiſh recuſant convict, or of every perſon whoſe wife is a popiſh recuſant convict, for popiſh books and relicks of popery: and if any altar, pix, beads, pictures, or ſuch like popiſh relicks, or any popiſh book, ſhall be found in their cuſtody, as in the opinion of the ſaid juſtices, mayor, or other chief officer, ſhall be thought unmeet for ſuch recuſant to have or uſe, the ſame ſhall be preſently defaced and burnt, if it be meet to be burned; and if it be a crucifix, or other relick of any price, the ſame to be defaced at the ſeſſions, and returned to the owner. 3 *J. c.* 5. *ſ.* 26.

VI. Foreign education of papiſts.

1. If any perſon ſhall contribute or ſend over ſea, any money or other relief to any ſeminary abroad; he ſhall incur a præmunire. 27 *El. c.* 2. *ſ.* 6.

2. They who be in ſeminaries abroad ſhall return in ſix months after proclamation, and conform in two days, before the biſhop, or two juſtices of the peace; otherwiſe if they return at all, without ſubmiſſion, they ſhall be guilty of high treaſon. 27 *El. c.* 2. *ſ.* 5.

3. If any perſon ſhall go, or ſend any perſon, beyond the ſeas, to be popiſhly educated, who ſhall be there ſo inſtructed, or ſhall ſend any money or other thing for that purpoſe, he ſhall, on conviction before the judges of the king's bench, or of aſſize, be diſabled to be plaintiff in any action, or to be committee of any ward, or executor, or adminiſtrator, or capable of any legacy or deed of gift, or to bear any office; and ſhall forfeit his goods, and ſhall forfeit his lands during life. But if he ſhall conform in ſix months after his return, he ſhall be diſcharged. 3 *C. c.* 2. 1 *J. c.* 4. *ſ.* 6, 7.

4. Children,

4. Children, not being ſoldiers, mariners, merchants, or their apprentices or factors, departing the realm, on account of education, or otherwiſe without licence from the king, or ſix of the privy council, ſhall take no benefit by any gift, conveyance, deſcent, deviſe, or otherwiſe, of any lands or goods, until they conform. 3 *J.* *c.* 5. *ſ.* 16. And perſons ſending any ſuch child over ſeas, without licence, ſhall forfeit 100 l. to him who ſhall ſue in any court of record. 3 *J.* *c.* 5. *ſ.* 16. 11 & 12 *W.* *c.* 4. *ſ.* 6.

5. No woman, or child under 21, except ſailors or factors, ſhall paſs over ſea without licence of the king and council; on pain that the officer of the port ſhall forfeit his office and his goods, the owner of the ſhip his veſſel, and the maſter his goods and be impriſoned 12 months. 1 *J.* *c.* 4. *ſ.* 8.

6. No perſon, not bred up by his parents in the popiſh religion, ſhall breed up or ſuffer his children to be bred up in the popiſh religion; on pain of being diſabled to bear any office, until they conform. 25 *C.* 2. *c.* 2. *ſ.* 8.

VII. Penalty of perverting others, or being perverted to popery.

If any perſon ſhall put in practice to reconcile any ſubjects to popery, or if any perſon ſhall be willingly ſo reconciled; he, his aiders, and maintainers, ſhall be guilty of high treaſon. The trial to be at the aſſizes, or in the king's bench. 3 *J.* *c.* 4. *ſ.* 22, 23, 25.

VIII. Jeſuits and popiſh prieſts.

1. No jeſuit or popiſh prieſt ſhall come into or be in the realm, on pain of high treaſon; unleſs he conform. 27 *El.* *c.* 2. *ſ.* 2, 3, 10.

2. And if any perſon ſhall knowingly receive or relieve any ſuch, he ſhall be guilty of felony without benefit of clergy. 27 *El.* *c.* 2. *ſ.* 4.

3. And if any perſon, knowing ſuch jeſuit or prieſt to be in the realm, ſhall not in 12 days diſcover the ſame to a juſtice of the peace or other higher officer, he ſhall be fined and impriſoned at the king's pleaſure. And if ſuch juſtice or other officer ſhall not in 28 days give information thereof to one of the privy council, he ſhall forfeit 200 marks. 27 *El.* *c.* 2. *ſ.* 11.

4. And a ſuſpected jeſuit or popiſh prieſt, being lawfully examined, and refuſing to anſwer whether he be a jeſuit or popiſh prieſt, ſhall be impriſoned till he make direct and true anſwer. 35 *El. c.* 2. *ſ.* 11.

5. And the perſon who ſhall firſt diſcover, to any juſtice of the peace, any perſon who ſhall entertain or relieve any jeſuit, ſeminary, or popiſh prieſt, within three days after the offence; ſo that by reaſon of ſuch diſcovery any offender ſhall be taken and convicted: ſuch perſon ſhall not only be freed from any penalty for ſuch offence, if himſelf be an offender therein, but ſhall alſo have the third part of the forfeitures if they do not exceed 150 l. and if they do exceed 150 l. then he ſhall have 50 l. 3 *J. c.* 5. *ſ.* 1.

6. If any perſon ſhall apprehend any popiſh biſhops, prieſt, or jeſuit, and proſecute him till he be convicted of exerciſing any part of the office or function of a popiſh biſhop or prieſt, he ſhall receive from the ſheriff 100 l. reward. 11 & 12 *W. c.* 4. *ſ.* 1, 2.

7. If any popiſh biſhop, prieſt, or jeſuit, ſhall exerciſe any part of the office or function of a popiſh biſhop or prieſt, (except in foreign miniſters houſes), he ſhall be adjudged to perpetual impriſonment. 11 & 12 *W. c.* 4. *ſ.* 3, 5.

8. If any perſon ſhall contribute, or ſend over ſea, any money or other relief to any jeſuit or popiſh prieſt; he ſhall incur a præmunire. 27 *El. c.* 2. *ſ.* 6.

IX. Saying and hearing maſs.

1. If *any perſon* ſhall *ſay or ſing maſs*, he ſhall forfeit 200 marks, and be impriſoned for a year, and till paid;

And if any perſon ſhall wilfully *hear* maſs, he ſhall forfeit 100 marks, and be impriſoned for a year;

The forfeitures to be one third to the king, one third to the poor, and one third to him who ſhall ſue in any court of record. And if not paid in three months after judgment, he ſhall be committed till he pays, or conforms. And the ſeſſions may determine the ſame. 23 *El. c.* 1. *ſ.* 4, 9, 10, 11.

2. If any popiſh *biſhop*, *prieſt*, or *jeſuit* ſhall ſay maſs, except in foreign miniſters houſes, he ſhall be adjudged to perpetual impriſonment. 11 & 12 *W. c.* 4. *ſ.* 3, 5.

3. And

3. And the perſon who ſhall firſt diſcover to any juſtice of the peace any maſs to have been ſaid, and the perſons that were preſent thereat, and the prieſt that ſaid the ſame, or any of them, within three days after the offence, and by reaſon of ſuch diſcovery any offender is taken and convicted; ſuch perſon ſhall not only be freed from any penalty for ſuch offence, if himſelf be an offender therein, but ſhall alſo have the third part of the forfeitures, if they do not exceed 150 l. and if they do exceed 150 l. then he ſhall have 50 l. and after conviction of the offender, he ſhall have a certificate from the judges, or juſtices of the peace before whom the conviction ſhall be, directed to the ſheriff or perſon who ſhall ſeize the goods, or levy the forfeiture, commanding him to pay the ſame. 3 *J.* *c.* 5. *ſ.* 1.

4. And conveyances made by recuſants to evade the penalties for ſaying or hearing maſs, ſhall he void. 29 *El.* *c.* 6. *ſ.* 1.

X. Penalties of 12 *d. a* ſunday, *and* 20 *l. a month, for not going to church.*

1. All perſons, having no lawful or reaſonable excuſe to be abſent, ſhall reſort to their pariſh church or chapel, or upon reaſonable let thereof, to ſome uſual place where divine ſervice ſhall be performed, according to the liturgy and practice of the church of *England*, upon every *ſunday* and holiday; on pain of puniſhment by the cenſures of the church, or of forfeiting to the poor for every offence 1 s. to be levied by the churchwardens by way of diſtreſs. 1 *El.* *c.* 2. *ſ.* 14, 24. Except diſſenters qualified by the act of toleration, who reſort to ſome congregation of religious worſhip allowed by that act. 1 *W.* *c.* 18. *ſ.* 2. 16.

And he who is abſent from his own pariſh church, ſhall be put to prove where he went to church. 1 *Haw.* 13.

And one juſtice, on proof (if one month after default), by confeſſion, or oath of witneſs, may call the party before him; and if he ſhall not make ſufficient excuſe, and due proof thereof to the ſatisfaction of the juſtice, ſuch juſtice ſhall give warrant to the churchwarden to levy 12 d. to the uſe of the poor of the pariſh for every default by diſtreſs and ſale, rendering the overplus: For want of diſtreſs commitment till paid. 3 *J.* *c.* 4. *ſ.* 27, 28.

2. Every

2. Every perſon above the age of 16 years, who ſhall not repair to ſome church, chapel, or uſual place of common prayer, being convicted thereof before the judges of aſſize, or juſtices of the peace in their open quarter ſeſſions, ſhall forfeit 20 l. a month, one third to the king one third to the maintenance of the poor of the pariſh, and of the houſes of correction and of impotent and maimed ſoldiers, as the lord treaſurer, chancellor, and chief baron of the exchequer ſhall order, and one third to him who ſhall ſue in any court of record. If not paid in three months after judgment, he ſhall be impriſoned till he pay, or conform himſelf to go to church. 23 *El. c.* 1. *ſ.* 5, 11. 29 *El. c.* 6. *ſ.* 7.

Note; Theſe two laſt ſtatutes, by inflicting 20 l. for a month's abſence, diſpenſe not with the forfeiture of 12 d. on the former ſtatutes for the abſence of one *ſunday*; for both may well ſtand together; and the 12 d. is immediately forfeited upon the abſence of each particular day. 1 *Haw.* 13.

3. And every offender in not repairing to church, being once convicted, ſhall pay into the exchequer at *Eaſter* or *Michaelmas* term, which ſhall firſt happen after the conviction, 20 l. for every month contained in the indictment; and ſhall alſo afterwards, without any other indictment or conviction, pay into the exchequer at every *Eaſter* or *Michaelmas* term 20 l. for every month till he conform; except where the king may refuſe the ſame, and take two parts of the lands as hereafter is mentioned. 3 *J. c.* 4. *ſ.* 8.

4. And every conviction recorded, ſhall by the court be certified into the exchequer, and if default ſhall be made in any part of payment, the king may by proceſs take the goods, and two parts of the lands of the offenders. 3 *J. c.* 4. *ſ.* 9.

5. Alſo the king may refuſe the penalty of 20 l. a month for not coming to church, and in lieu thereof may ſeize two parts of the offender's lands, and keep them till he conform. 3 *J. c.* 4. *ſ.* 10, 11.

6. And where ſeizure ſhall be made of two parts of the lands, for the penalty of 20 l. a month, ſuch two parts ſhall, according to the extent thereof, go towards payment, but the third part ſhall not be extended or ſeized. And when the recuſant ſhall die, and the ſaid penalty not paid, the king ſhall keep the two parts, until the whole be thereby, or otherwiſe, paid. 1 *J. c.* 4. *ſ.* 5.

7. And

7. And every perſon who ſhall retain in his ſervice, or ſhall relieve, keep, or harbour in his houſe any ſervant, ſojourner, or ſtranger, who ſhall not repair to church, but ſhall forbear for a month together, not having reaſonable excuſe, ſhall forfeit 10 l. for every month he ſhall continue in his houſe, ſuch perſon ſo forbearing. And the ſeſſions may hear and determine the ſame. 3 *J.* *c.* 4. *ſ.* 32, 33, 36.

8. And conveyances made by recuſants to evade the penalties for not coming to church, ſhall be void. 29 *El.* *c.* 6. *ſ.* 1.

9. And the juſtices in ſeſſions ſhall have power to enquire, hear, and determine of all recuſants and offences for not repairing to church; and ſhall have power at the ſeſſions where an indictment is taken for ſuch offence, to make proclamation, by which it ſhall be commanded that the body of the offender ſhall be rendered to the ſheriff, bailiff, or gaoler, before the next ſeſſions: And if he ſhall not appear of record at the next ſeſſions, then upon ſuch default recorded, he ſhall ſtand convicted. 3 *J.* *c.* 4. *ſ.* 7.

10. And no indictment or other proceeding againſt recuſants ſhall be reverſed (unleſs they conform) for any want of form, nor by any thing but by direct traverſe to the point of not coming to church. 3 *J.* *c.* 4. *ſ.* 16.

11. But every perſon, who ſhall uſually on *ſundays*, have in his houſe divine ſervice as eſtabliſhed by law, and be thereat himſelf uſually preſent, and ſhall four times a year at leaſt go to the pariſh church or other common church or chapel, he ſhall not incur any penalty for not repairing to church. 23 *El.* *c.* 1. *ſ.* 12. And this alſo ſhall not extend to proteſtant diſſenters, who reſort to ſome place of religious worſhip allowed by the act of toleration. 1 *W.* *c.* 18.

12. And the churchwardens and conſtables ſhall (on pain of 20 l.) preſent at the quarter ſeſſions once a year, the monthly abſence from church of all recuſants, and the names and ages of their children above nine years of age, and the names of their ſervants. And the preſentments ſhall be entered by the clerk of the peace without fee, on pain of 40 s. And if the party preſented ſhall be indicted and convicted, ſuch churchwarden or conſtable ſhall have a reward of 40 s. to be levied of the recuſant's goods by warrant of the juſtices in ſeſſions. 3 *J.* *c.* 4. *ſ.* 4, 5, 6.

XI. Re-

XI. Regiſtering eſtates.

1. Every perſon being a popiſh recuſant, or papiſt, or educated in the popiſh religion, or whoſe parent or parents ſhall be a papiſt or papiſts, or who ſhall uſe or profeſs the popiſh religion, ſhall within ſix months after he ſhall be of the age of 21, take the oaths of the 1 *G. c.* 13. and make the declaration againſt popery of the 30 *C.* 2. in one of the courts at *Weſtminſter*, or the quarter ſeſſions; or in default thereof, ſhall within ſix months afterwards, and within ſix months after he, or any truſtee for him, ſhall come into the poſſeſſion of any lands, regiſter the ſame; where they lie; who is the poſſeſſor of them; what eſtate he hath in them; the yearly rent, if lett; if lett upon leaſe, who made it, what rent, what fine; the time when regiſtered; in a parchment book or roll to be kept by the clerk of the peace. 1 *G. ſt.* 2. *c.* 55. *ſ.* 1.

2. And ſuch lands ſhall be regiſtered in the county, where the houſe thereupon ſtands. 3 *G. c.* 18. *ſ.* 3.

3. And his name ſhall be ſubſcribed to the regiſtry, in the preſence of two juſtices in open ſeſſions, by himſelf or his lawful attorney (the warrant of attorney to be proved by two witneſſes, and entered of recoard); and two juſtices ſhall ſubſcribe their names as witneſſes (on pain of 20 *l.*) that the entry was duly made. And the clerk of the peace ſhall, on application made ten days at leaſt before the ſeſſions, enter the ſame before ſuch ſeſſions; who ſhall have 3*d.* for every 200 words of the regiſtry and entry of record, and for every copy thereof, and for any one comparing the ſame with the originals; and 4*d.* for every ſearch. And if he neglect or refuſe to do his duty herein, he ſhall forfeit his office. 1 *G. ſt.* 2. *c.* 55. *ſ.* 1.

4. Perſons not qualifying, or not regiſtering, or not regiſtering truly, ſhall forfeit ſuch lands, or the value thereof, two thirds to the king, and one third to him who ſhall ſue for the ſame at the common law, or in chancery. 1 *G. ſt.* 2. *c.* 55. *ſ.* 1.

5. But no action for any forfeiture for not regiſtering, or for regiſtering fraudulently, ſhall be brought after two years after the offence committed. 3 *G. c.* 18. *ſ.* 2.

XII. Inrolling

XII. Inrolling deeds and wills.

1. No manors, lands, tenements, or hereditaments, or any intereſt therein, or rent, or profit thereout, ſhall paſs, alter, or change from any papiſt, or perſon profeſſing the popiſh religion, by any deed or will, except ſuch deed within ſix months after date, and ſuch will within ſix months after the death of the teſtator, be inrolled in one of the courts of record at *Weſtminſter*, or within the county where they lie, by the *cuſtos rotulorum*, and two juſtices of the peace, and the clerk of the peace, or two of them at leaſt, whereof the clerk of the peace to be one. 3 *G. c.* 18. *ſ.* 6.

2. But leaſes made by papiſts to proteſtants, whereon the full yearly value, or the ancient or moſt accuſtomed yearly rent or more ſhall be reſerved, need not to be inrolled. 10 *G. c.* 4. *ſ.* 19.

3. And by the 7 *G.* 3. *c.* 34. ſuch deeds and wills ſhall be good, if they be inrolled on or before *Jan.* 1. 1768. And there is generally the like clauſe of indemnity in ſome act of parliament every two or three years.

Alſo no purchaſe made for full and valuable conſideration, by and for the ſole benefit of any proteſtant, ſhall be avoided for or by reaſon that any deed or will, through which the title is derived, hath not been inrolled; ſo as no advantage was taken thereof before the purchaſe, and ſo as no decree or judgment hath been obtained for want of ſuch inrollment.

Provided alſo, that nothing herein ſhall extend to make good any grant, leaſe, or mortgage, of the advowſon or right of preſentation, collation, nomination, or donation, of and to any benefice, prebend, or eccleſiaſtical living, ſchool, hoſpital, or donative, or any avoidance thereof, made by any papiſt, or perſon profeſſing the popiſh religion, in truſt by or for any ſuch perſon, whether ſuch truſt hath been declared by writing or not.

XIII. Double taxes.

By the land tax acts, papiſts and reputed papiſts, being of 18 years of age, who ſhall not have taken the oaths of allegiance and ſupremacy, ſhall pay double land tax.

XIV. Papiſts not to come to court.

1. No popiſh recuſant convict ſhall come into the court or houſe where the king or his heir apparent ſhall be (unleſs

leſs commanded by the king or council); on pain of 100l. half to the king, and half to him who ſhall diſcover and ſue for the ſame in any court of record. 3 *J. c.* 5. *ſ.* 2.

2. And if any member of either houſe of parliament, not having taken the oaths of allegiance and ſupremacy, and made and ſubſcribed the declaration againſt popery, ſhall come into the king's preſence, or the court or houſe where he is (without licence from ſix of the privy council), he ſhall ſuffer as a popiſh recuſant convict, and ſhall be diſabled to hold any office, or to vote in either houſe of parliament, or to be plaintiff, guardian, executor, adminiſtrator, or to take any legacy or gift, and ſhall forfeit 500l. to him who ſhall ſue. 30 *C.* 2. *ſt.* 2. 1.

XV. Not to come within ten miles of London.

1. All popiſh recuſants, who ſhall come, dwell, or remain, within the city of *London*, or within ten miles thereof, who ſhall be indicted or convicted of ſuch recuſancy, or who ſhall forbear going to church to hear divine ſervice for three months, ſhall within ten days after ſuch indictment or conviction, depart from the ſaid city, and ten miles compaſs of the ſame; and ſhall alſo within the ſaid time deliver up their names to the lord mayor, if they dwell within the city or liberties thereof; and if they dwell in any other county, within ten miles of the city, they ſhall deliver up their names to the next juſtice; on pain of 100l. half to the king, and half to him who ſhall ſue. 3 *J. c.* 5. *ſ.* 4.

2. And for the better diſcovering of papiſts within ten miles of *London*, every juſtice in the neighbouring counties, ſhall cauſe to be arreſted and brought before him every ſuch perſon within the ſaid limits, not being a merchant foreigner, as are or are reputed to be papiſts (except ambaſſadors ſervants), and tender to him the declaration againſt popery of the 30 *C.* 2. which if he ſhall refuſe to make and ſubſcribe, and afterwards continue within ten miles of *London*, he ſhall ſuffer as a popiſh recuſant convict. The juſtice to certify ſuch ſubſcription, or refuſal, into the king's bench or to the next quarter ſeſſions. 1 *W. c.* 9.

XVI. Papiſts

XVI. Papiſts confined to their habitations.

1. Every perſon above 16 years of age, being a popiſh recuſant, and having any certain place of abode, who being convicted for not repairing to ſome church, chapel, or uſual place of common prayer to hear divine ſervice there, but forbearing the ſame contrary to law, ſhall within 40 days next after the conviction (if he be within the realm, and not hindred by impriſonment, by command of the king or council, or by ſickneſs, and in ſuch caſe in 20 days after the removal of ſuch impediment) repair to his uſual dwelling, and ſhall not remove above five miles from thence, unleſs he be licenſed as is herein after directed, on pain of forfeiting his goods, and alſo to the king his lands during life, unleſs they be cuſtomary or copyhold, and then to the lord of the manor. 35 *El. c.* 2. *ſ.* 3, 5.

And it ſeemeth that theſe ſhall be computed according to the *Engliſh* manner, allowing 1760 yards to a mile, and that the ſame ſhall be reckoned not by ſtraight lines, as a bird or arrow may fly; but according to the neareſt and moſt uſual way. 1 *Haw.* 25.

2. Having repaired to their dwelling, they ſhall within 20 days notify their coming, and preſent themſelves, and deliver their true names in writing to the miniſter of the pariſh, and to the conſtable, and the miniſter ſhall enter the ſame in a book. 35 *El. c.* 2. *ſ.* 6.

3. And, after, the miniſter and conſtable ſhall certify the ſame in writing to the next ſeſſions; and the clerk of the peace ſhall enter the ſame in the rolls of the ſeſſions. 35 *El. c.* 2. *ſ.* 7.

4. And if ſuch recuſant (not being a feme covert) have not lands of 20 marks a year, or goods worth above 40 l. and ſhall not conform in three months, being thereto required by the biſhop, or a juſtice of the peace, or the miniſter; he ſhall abjure the realm before two juſtices of the peace, or the coroner: who ſhall enter the ſame of record, and certify the ſame at the next aſſizes. And if he ſhall refuſe to abjure or not depart, or return; he ſhall be guilty of felony without benefit of clergy. 35 *El. c.* 2. *ſ.* 8, 9, 10.

Abjure.] The form whereof, according to the ancient books, is this: *This hear you, ſir coroner, that I.* A. O. *of* ——— *in the county of* ——— *am a popiſh recuſant, and*

in

in contempt of she laws and ſtatutes of England, *I have and do refuſe to come to their church: I do therefore, according to the intent and meaning of the ſtatute made in the* 35*th year of queen* Elizabeth, *late queen of this realm of* England, *abjure the realm of* England. *And I ſhall haſte me towards the port of* P. *which you have given and aſſigned to me, and that I ſhall not go out of the highway, leading thither, nor return back again; and if I do, I will that I be taken as a felon of the king. And that at* P. *I will diligently ſeek for paſſage, and I will tarry there but one flood and ebb, if I can have paſſage: and unleſs I can have it in ſuch ſpace, I will go every day into the ſea up to my knees, aſſaying to paſs over. So help me God and his doom.* Stam. 116. Mir. b. 1. Offic. Cor. 49.

5. But if ſuch perſon reſtrained ſhall be urged by proceſs, or be bound to appear in any of the king's courts, or be ſent for by the council, or be bound to render his body to the ſheriff on proclamation, he ſhall incur no penalty for removing for ſuch purpoſe. 35 *El. c.* 2. *ſ.* 13, 14.

6. Alſo, popiſh recuſants confined to their habitations by the 35 *El.* may be licenſed to remove.

(1) By the king.

(2) By three or more of the privy council, in writing under their hands; who may give licence to ſuch recuſant to travel out of the compaſs of five miles, for ſuch time as ſhall be contained in his licence, for his travelling, attending, and returning, and without any other cauſe to be expreſſed in the licence.

(3) If ſuch recuſant ſhall have neceſſary occaſion or buſineſs; then, upon licence in writing under the hands and ſeals of four of the next juſtices of the county or place, with the aſſent in writing of the biſhop; or of the lieutenant, or a deputy lieutenant of the county reſiding therein, under their hands and ſeals; in which licence ſhall be ſpecified both the cauſe of the licence, and the time how long the party licenſed ſhall be abſent in travelling, attending, and returning: In ſuch caſe, the perſon ſo licenſed may travel about ſuch his neceſſary buſineſs, and for ſuch time as ſhall be compriſed in the licence; he firſt taking oath before the ſaid four juſtices, or any of them, that he hath truly informed them of the cauſe of his journey, and that he ſhall not make any cauſeleſs ſtay. And ſuch perſon departing above file miles, not having ſuch licence, and not having taken ſuch oath, ſhall incur the penalty of the 35 *El.* above-mentioned. 3 *J. c.* 5. *ſ.* 7.

XVII. Not

XVII. Not to inherit, or take by deviſe.

If any perſon educated in the popiſh religion, or profeſſing the ſame, ſhall not within ſix months after he ſhall be 18 years of age, take the oaths of allegiance and ſupremacy, and ſubſcribe the declaration of the 30 *C.* 2. in the chancery, king's bench, or quarter ſeſſions, he ſhall (in reſpect of himſelf, but not of his heirs) be incapable to inherit or take any lands, by deſcent, deviſe, or limitation; but the next of kin, being a proteſtant, ſhall have the ſame. 11 & 12 *W.* *c.* 4. *ſ.* 4.

XVIII. Shall not purchaſe.

1. Every papiſt, or perſon making profeſſion of the popiſh religion, ſhall be diſabled to purchaſe any lands, or profits out of the ſame, in his own name, or in the name of any other to his uſe, or in truſt for him; but the ſame ſhall be void. 11 & 12 *W.* *c.* 4. *ſ.* 4.

2. But no ſale of any lands for a valuable conſideration by any perſon, being the reputed owner, or in poſſeſſion of the rents and profits thereof, to be made to and for a proteſtant purchaſer, ſhall be avoided on any pretence of diſability in the act of the 11 & 12 *W.* *c.* 4. and of the 1 *J.* *c.* 4. incurred by any perſon making ſuch ſale, or by or through whom the title ſhall be derived; unleſs before ſuch ſale, the perſon intitled to take advantage of ſuch diſability, ſhall have recovered the lands, or given notice of his claim to the purchaſer, or entered his claim at the quarter ſeſſions. 3 *G.* *c.* 18. *ſ.* 4. But the above ſtatute of the 11 & 12 *W.* ſhall continue, that papiſts ſhall not purchaſe. *ſ.* 5.

XIX. Shall not preſent to benefices.

1. A popiſh recuſant convict ſhall be diſabled to preſent, or grant any avoidance, to any eccleſiaſtical living, or nominate to any free ſchool, hoſpital, or donative. 3. *J.* *c.* 5. *ſ.* 18.

2. And whereas by the 1 *W.* *c.* 15. any two juſtices who ſhall know or ſuſpect, or ſhall be informed, that any perſon is, or is ſuſpected to be a papiſt, ſhall tender to him the declaration of the 30 *C.* 2. and if he ſhall not appear before the ſaid juſtices, on notice to him given by warrant of the ſaid juſtices, or left at his uſual Place of

abode, or if he ſhall refuſe to make and ſubſcribe the declaration, they ſhall certify his name and place of abode, at the next ſeſſions to be there recorded by the clerk of the peace; It is enacted by the 1 *W.* *c.* 26. *ſ.* 2. that every perſon ſo recorded, ſhall from the time of ſuch record, be diſabled to preſent or nominate to any benefice, free ſchool, hoſpital, or donative, as fully as if he were a popiſh recuſant convict.

3. And where any perſon ſhall be poſſeſſed of any right of preſentation or nomination as aforeſaid, *in truſt* for any papiſt or popiſh recuſant, who ſhall be convicted or diſabled by the 3 *J.* *c.* 5. or by the 1 *W.* *c.* 26. ſuch truſtee, ſhall be diſabled to preſent or nominate, or to grant any avoidance thereof. 1 *W.* *c.* 26. *ſ.* 3.

4. Alſo, it is further enacted, that every papiſt, or perſon making profeſſion of the popiſh religion (that is, whether convicted by either of the former acts or not) and every child not being a proteſtant, under the age of 21, of every ſuch papiſt or perſon profeſſing the popiſh religion, and every mortgagee, truſtee, or perſon, any ways intruſted, directly or indirectly, by or for any ſuch papiſt or perſon profeſſing the popiſh religion, or ſuch child as aforeſaid, whether ſuch truſt be declared by writing or not, ſhall be diſabled to preſent or nominate. 12 *An.* *ſt.* 2. *c.* 14. *ſ.* 1.

5. And the chancellor and ſcholars of the Univerſity of *Oxford* ſhall preſent and nominate to the ſame, in the counties of *Oxford*, *Kent*, *Middleſex*, *Suſſex*, *Surry*, *Hampſhire*, *Berkſhire*, *Buckinghamſhire*, *Glouceſterſhire*, *Worceſterſhire*, *Staffordſhire*, *Warwickſhire*, *Wiltſhire*, *Somerſetſhire*, *Devonſhire*, *Cornwall*, *Dorſetſhire*, *Herefordſhire*, *Northamptonſhire*, *Pembrokeſhire*, *Caermarthenſhire*, *Brecknockſhire*, *Monmouthſhire*, *Cardiganſhire*, *Montgomeryſhire*, the city of *London*, and other cities and towns within the ſaid counties:

And the chancellor and ſcholars of the univerſity of *Cambridge* ſhall preſent and nominate in the counties of *Eſſex*, *Hertfordſhire*, *Bedfordſhire*, *Cambridgeſhire*, *Huntingdonſhire*, *Suffolk*, *Norfolk*, *Lincolnſhire*, *Rutlandſhire*, *Leiceſterſhire*, *Derbyſhire*, *Nottinghamſhire*, *Shropſhire*, *Cheſhire*, *Lancaſhire*, *Yorkſhire*, *Durham*, *Northumberland*, *Cumberland*, *Weſtmorland*, *Radnorſhire*, *Denbighſhire*, *Flintſhire*, *Carnarvonſhire*, *Angleſeyſhire*, *Merionethſhire*, *Glamorganſhire*, and the cities and towns within the ſaid counties. 3 *J.* *c.* 5. *ſ.* 19, 20.

6. And

6. And if any truſtee, mortgagee, or grantee, of an avoidance, ſhall preſent or nominate to any ſuch living, free ſchool, or hoſpital, whereof the truſt ſhall be for any recuſant convict, or diſabled, without giving notice in writing to the univerſity, in three months after the avoidance ſhall happen; he ſhall forfeit 500 l. to the univerſity. 1 *W.* *c.* 26. *ſ.* 4.

7. But the chancellor and ſcholars ſhall not preſent to any ſuch eccleſiaſtical living, any perſon who ſhall then have any other benefice with cure of ſouls; nor ſhall the perſon preſented be abſent from the ſame above 60 days in any one year. 1 *W.* *c.* 26. *ſ.* 5, 6.

8. And every *grant* of an eccleſiaſtical living, ſchool, hoſpital, or donative, by any papiſt or truſtee for him, ſhall be void, unleſs made *bona fide* for a full and valuable conſideration to a proteſtant purchaſer. And alſo every *deviſe* thereof, with intent to ſecure the benefit thereof to the heirs or family of ſuch Papiſt ſhall be void. 11 *G.* 2. *c.* 17. *ſ.* 5.

XX. Shall not teach ſchool.

If any papiſt ſhall keep ſchool, or take upon him the education, or government, or boarding of youth; he ſhall be adjudged to perpetual impriſonment. 11 & 12 *W.* *c.* 4. *ſ.* 3.

XXI. Diſabled as to offices, law, phyſick.

1. No recuſant convict ſhall practiſe the common law, as a counſellor, clerk, attorney, or ſolicitor; nor ſhall practiſe the civil law, as advocate or proctor; nor practiſe phyſick, nor be an apothecary; nor ſhall be a judge, miniſter, clerk, or ſteward of or in any court, or keep any court, nor ſhall be regiſter or town clerk, or other miniſter or officer in any court; nor ſhall bear any office or charge, as captain, lieutenant, corporal, ſerjeant, ancient bearer, or other office in camp, troop, band, or company of ſoldiers; nor ſhall be captain, maſter, governor, or bear any office or charge of or in any ſhip, caſtle, or fortreſs; but be utterly diſabled for the ſame: and every perſon offending herein, ſhall forfeit 100 l. half to the king, and half to him who ſhall ſue. 3 *J.* *c.* 5. *ſ.* 8.

2. And no popiſh recuſant convict, nor any having a wife being a recuſant convict, ſhall exerciſe any publick

office, unleſs ſuch huſband, and his children above 9 years old, and his ſervants, go to church and conform. 3 *J.* *c.* 5. *ſ.* 9.

XXII. Not to be executor, or adminiſtrator.

A popiſh recuſant convict ſhall be diſabled to be executor or adminiſtrator. 3 *J.* *c.* 5. *ſ.* 22.

XXIII. Not to be Guardian.

A popiſh recuſant convict ſhall not have the cuſtody of any child as guardian: but the wardſhip ſhall go to the next of kin, not being a recuſant, to whom the eſtate cannot lawfully deſcend. 3 *J.* *c.* 5. *ſ.* 22, 23.

XXIV. Shall be deemed excommunicate.

1. Every popiſh recuſant convict ſhall ſtand and be reputed to all intents and purpoſes diſabled, as a perſon excommunicated, and as if he had been ſo denounced by the laws of the realm. 3 *J.* *c.* 5. *ſ.* 11.

2. And on proceſs to the ſheriff, for apprehending a popiſh recuſant excommunicated, he may break open a houſe, or raiſe the power of the county. 3 *J.* *c.* 4. *ſ.* 35.

XXV. Popiſh baptiſm.

Every popiſh recuſant ſhall within one month next after the birth of any child, cauſe it to be baptized by a lawful miniſter in open church; or if it is infirm, to be baptiſed by a lawful miniſter; on pain of 100 l. one third to the king, one third to him who ſhall ſue, and one third to the poor. 3 *J.* *c.* 5. *ſ.* 14.

XXVI. Popiſh marriage.

1. Every man, being a popiſh recuſant convict, who ſhall be married otherwiſe than in ſome open church or chapel, and otherwiſe than according to the orders of the church of *England*, by a miniſter lawfully authorized, ſhall be utterly diſabled and excluded to have any eſtate of freehold into the lands of his wife, as tenant by the courteſy of *England:* And if ſhe have no lands, he ſhall forfeit 100 l. half to the king, and half to him who ſhall ſue. 3 *J.* *c.* 5. *ſ.* 13.

2. And every woman, being a popiſh recuſant convict, who ſhall be married in other form than as aforeſaid, ſhall be utterly excluded and diſabled, not only to claim any dower or jointure, but alſo her widow's eſtate and frank-bank in her huſband's cuſtomary lands, and be diſabled to have any part of his goods. 3 *J.* *c.* 5. *ſ.* 13.

3. But by the 26 *G.* 2. *c.* 33. After *March* 25, 1754, if they ſhall be married any where in *England*, other than in a church or publick chapel (unleſs by ſpecial licence from the archbiſhop of *Canterbury*), or without publication of banns, or licence, the marriage ſhall be null and void.

XXVII. Popiſh burial.

If any popiſh recuſant, not being excommunicate, ſhall be buried in any place, other than the church or church-yard, or not according to the eccleſiaſtical laws; the executors or adminiſtrators of every ſuch perſon ſo buried, ſhall forfeit 20 l. one third to the king, one third to the informer or him who ſhall ſue, and one third to the poor. 3 *J.* *c.* 5. *ſ.* 15.

XXVIII. Armour.

1. Any two juſtices, who ſhall know or ſuſpect, or ſhall be informed, that any perſon is or is ſuſpected to be a papiſt, may and ſhall tender to him the declaration in the act of the 30 *C.* 2. and if he ſhall not appear, after notice by warrant under hand and ſeal given to him, or left at his uſual place of abode; or ſhall not make and ſubſcribe the declaration; he ſhall be diſabled to have or keep in his houſe or elſewhere, or in the poſſeſſion of any other to his uſe, any arms, gunpowder or ammunition, except ſuch weapons as ſhall be allowed by the ſeſſions for the defence of his houſe or perſon. And any two juſtices may by warrant authorize in the day time any perſon, with the conſtable's aſſiſtance, to ſearch ſuch perſon's houſe for the ſame, and ſeize them for the uſe of the king. And the ſaid juſtices ſhall deliver the ſame in open court at the next ſeſſions for the uſe aforeſaid; where alſo, they ſhall certify the name and place of abode of every perſon ſo ſubſcribing, or not ſubſcribing. 1 *W.* *c.* 15. *ſ.* 2, 3, 4.

2. And notwithſtanding the taking away ſuch armour, gunpowder, and munition, the ſaid popiſh recuſant ſhall be charged with the providing and maintaining of horſe,

and other armour, and munition, as other ſubjects, according to their ſeveral abilities. 3 *J.* *c.* 5. *ſ.* 29.

3. And every ſuch perſon, not diſcovering and delivering them up to ſome juſtice in ten days after default in not appearing, or not ſubſcribing as aforeſaid, or hindering the ſeizure, ſhall be committed to gaol by any two juſtices for three months, and ſhall forfeit the arms, and pay treble value of them to the king, to be appraiſed by the juſtices at the next ſeſſions. 1 *W.* *c.* 15. *ſ.* 5.

4. And every other perſon who ſhall conceal, or knowing thereof, not diſcover to a juſtice ſuch arms or ammunition, or ſhall hinder the ſeizing thereof, ſhall be committed to gaol by two juſtices for three months, and ſhall forfeit to the king the treble value of the arms. 1 *W.* *c.* 15. *ſ.* 6.

5. And every perſon who ſhall diſcover ſuch arms or ammunition, ſo as they ſhall be ſeized, ſhall have a reward equal to the value thereof ordered by the ſeſſions out of the the goods of the offender, to be levied by diſtreſs. 1 *W.* *c.* 15. *ſ.* 7.

XXIX. Horſes.

1. Every papiſt making default in not appearing, or not ſubſcribing (as in the former ſection concerning armour) ſhall not have or keep in his poſſeſſion, or in the poſſeſſion of any other to his uſe, or at his diſpoſition, any horſe above the value of 5 l. to be ſold. And two juſtices may authorize any perſon, with the conſtable's aſſiſtance, to ſeize all ſuch horſes for the king's uſe. 1 *W.* *c.* 15. *ſ.* 9.

2. And if any perſon ſhall conceal, or aſſiſt in concealing, any ſuch horſe, he ſhall be committed by warrant of two juſtices to priſon for three months, and ſhall forfeit to the king treble the value of ſuch horſe. 1 *W.* *c.* 15. *ſ.* 10.

XXX. Popiſh wife.

1. If any married woman being a popiſh recuſant convict, ſhall not conform in three months, ſhe ſhall be committed to priſon, by one of the privy council, or by the biſhop, if ſhe be a baroneſs; or, if under that degree, by two juſtices (1 *Q.*) until ſhe ſhall conform, unleſs her huſband ſhall pay to the king for her offence for every month 10 l. or elſe the third part of his lands, ſo long as ſhe ſhall continue out of priſon. 7 *J.* *c.* 6. *ſ.* 28.

2. A

2. A wife being a popiſh recuſant convict, her huſband not being ſo, ſhall forfeit to the king two parts of her jointure and dower, ſhall not be executrix or adminiſtratrix of her huſband, nor ſhall have any ſhare of his goods and chattels. 3 *J.* *c.* 5. *ſ.* 13.

3. But if ſhe hath been married (out of *England*) otherwiſe than according to the form of the church of *England*, ſhe ſhall be diſabled to claim any dower or jointure, or widow's eſtate, of her huſband's lands; and ſhall have no part of his goods. 3 *J.* *c.* 5. *ſ.* 13. And if in *England*, the marriage ſhall be void. 26 *G.* 2. *c.* 33.

XXXI. Heir of a popiſh recuſant.

If the heir of a popiſh recuſant ſhall be under ſixteen, at the death of ſuch recuſant, and ſhall after ſuch age become recuſant, he ſhall be charged with the penalties happening to him by reaſon of ſuch his anceſtor's recuſancy, until ſuch time as he ſhall conform. 1 *J.* *c.* 4. *ſ.* 3, 4.

XXXII. Proteſtant children of papiſts.

If any popiſh parent, in order to the compelling his child, being a proteſtant, to change his religion, ſhall refuſe to allow him a fitting maintenance, the lord chancellor may make order therein. 11 & 12 *W.* *c.* 4. *ſ.* 7.

XXXIII. Oaths.

1. By the toleration act, if any perſon being required by a juſtice of the peace, ſhall refuſe to take the oaths of allegiance and ſupremacy, and to make and ſubſcribe the declaration againſt popery of the 30 *C.* 2. he ſhall be committed by the ſaid juſtice to priſon; and, at the next ſeſſions, if he ſhall again refuſe to make and ſubſcribe the ſaid declaration, he ſhall be deemed and ſuffer as a popiſh recuſant convict. *ſ.* 12.

2. And by the 1 *G.* *ſt.* 2. *c.* 13. Two juſtices may ſummon any perſon whom they ſhall ſuſpect to be diſaffected, by writing under their hands and ſeals to appear before them at a time prefixed, to take the oaths of allegiance, ſupremacy, and abjuration: which ſummons ſhall be ſerved on ſuch perſon, or left at his dwelling houſe, or uſual place of abode, with one of the family there; and if ſuch perſon ſhall neglect or refuſe to appear, then, on due proof made upon oath of ſerving the ſaid ſummons,

they ſhall certify the ſame to the next ſeſſions, to be there recorded: And if ſuch perſon ſhall neglect or refuſe to appear and take the oaths at the ſaid ſeſſions (his name being publickly read at the firſt meeting of the ſaid ſeſſions) he ſhall be taken and adjudged a popiſh recuſant convict. And the ſame ſhall be from thence certified by the clerk of the peace, into the chancery, or king's bench, to be there recorded. *ſ.* 10, 11.

XXXIV. Miniſter to preſent papiſts.

Miniſters ſhall preſent popiſh recuſants to the biſhop, every year before *June* 24. Can. 114.

XXXV. Recuſants conforming.

1. A recuſant conforming ſhall be diſcharged of the penalties which he might otherwiſe ſuſtain in reſpect of his recuſancy. 1 *J. c.* 4. *ſ.* 2.

2. And by the 11 *G.* 2. *c.* 17. Papiſts conforming to the proteſtant religion, and taking the oaths, and ſubſcribing the declaration of the 30 *C.* 2. in the chancery, king's bench, or quarter ſeſſions, (to be there recorded,) ſhall have their eſtates freed of the diſabilities incurred before ſuch conforming. *ſ.* 1, 2, 3, 4.

3. And a recuſant convicted having conformed, ſhall at leaſt once a year receive the ſacrament in the pariſh church on pain of forfeiting for the firſt year 20 l. for the ſecond 40 l. and for every year after 60 l. half to the king, and half to him who ſhall ſue in the courts at *Weſtminſter*, or at the aſſizes, or ſeſſions. 3 *J. c.* 4. *ſ.* 2, 3.

And at the ſeſſions where an indictment for ſuch offence is taken, the juſtices ſhall have power to make proclamation, by which it ſhall be commanded, that the body of the offender ſhall be rendered to the ſheriff, bailiff, or gaoler, before the next ſeſſions; and if he ſhall not appear of record next ſeſſions, then upon ſuch default recorded, he ſhall ſtand convicted. *ſ.* 7.

And no indictment or other proceeding ſhall be reverſed for want of form, nor by any thing but by direct traverſe to the point of not receiving the ſacrament. *ſ.* 16.

But the huſband ſhall not be charged with a penalty for the wife's offence in not receiving the ſacrament; nor ſhall the wife be chargeable for not receiving during her marriage. *ſ.* 40.

XXXVI.

XXXVI. Eccleſiaſtical juriſdiction.

It is generally provided in the foregoing acts, that nothing therein ſhall take away or abridge the authority or juriſdiction of the eccleſiaſtical cenſures.

Note; the oaths and declarations abovementioned, are inſerted at large in the title Oaths.

Poſſe comitatus. See Arreſt.

Poſt.

1. NO perſon ſhall be capable of exerciſing any employment relating to the poſt office, or any branch thereof, or be any way concerned in receiving, ſorting, or delivering of letters, before he ſhall have taken the following oath, before a juſtice of the peace where he reſides: Poſtmaſter's oath.

I A. B. *do ſwear, that I will not wittingly, willingly, or knowingly open, detain, or delay, or cauſe, procure, permit, or ſuffer to be opened, detained, or delayed, any letter, or letters, packet or packets, which ſhall come into my hands, power, or cuſtody, by reaſon of my employment in or relating to the poſt-office; except by the conſent of the perſon or perſons to whom the ſame is or ſhall be directed, or by an expreſs warrant in writing under the hand of one of the principal ſecretaries of ſtate for that purpoſe; or except in ſuch caſes, where the party or parties to whom ſuch letter or letters, packet or packets, ſhall be directed, or who is or are chargeable with the payment of the port or ports thereof, ſhall refuſe or neglect to pay the ſame, and except ſuch letters or packets, as ſhall be returned for want of true directions, or when the party or parties to whom the ſame is or ſhall be directed, cannot be found: And that I will not any way imbezzle any ſuch letter or letters, packet or packets, as aforeſaid.* 9 An. c. 10. ſ. 41.

And if any perſon ſhall do any thing contrary to the ſaid oath, he ſhall forfeit 20 l. and his office. *ſ.* 40.

2. And perſons appointed from time to time to meaſure the poſt roads, ſhall be ſworn to perform the ſame, according to the beſt of their ſkill and judgment, before a juſtice of the peace, who ſhall make a certificate thereof Meaſurer's oath.

in

in writing, to be entered in the general poſt office, without fee. 9 *An. c.* 10. *ſ.* 12. 5 *G.* 3. *c.* 25. *ſ.* 9, 10.

Rates of poſtage. 3. The rates or prices for the carriage of letters, ſhall be according to the ſeveral rates and ſums following:

For every ſingle letter, not exceeding one whole poſt ſtage from the office where the letter may be put in, 1 d; double letter, 2 d; treble, 3 d; an ounce, 4 d; and ſo in proportion. 5 *G.* 3. *c.* 25. *ſ.* 5.

Above one poſt ſtage, and not exceeding two: a ſingle letter, 2 d; double, 4 d; treble, 6 d; an ounce, 8 d; and ſo in like proportion. *id.*

Above two poſt ſtages, and not exceeding 80 miles from the general poſt office: a ſingle letter, 3 d; double, 6 d; an ounce; 12 d. 9 *An. c.* 10. *ſ.* 6.

Above 80 miles: ſingle letter, 4 d; double, 8 d; an ounce, 1 s. 4 d: and ſo in proportion. *id.*

In like manner, there are different rates appointed by the ſeveral acts to and from foreign parts, according to the diſtance, or difficulty of conveyance. And all maſters of ſhips or veſſels bringing letters from abroad, ſhall deliver the ſame (except in the caſe of quarentine) at the poſt office, before they break bulk; for which the poſtmaſter ſhall receive 1 d. extraordinary for each letter. 5 *G.* 3. *c.* 25. *ſ.* 3, 4.

Bills of exchange written on the ſame piece of paper with a letter, and ſeveral letters to ſeveral perſons written on the ſame piece of paper, ſhall pay as ſo many diſtinct letters. 6 *G. c.* 21. *ſ.* 51.

And writs or other proceedings at law, incloſed, or written on the ſame piece of paper with a letter, ſhall pay as ſo many diſtinct letters. 26 *G.* 2. *c.* 13. *ſ.* 6.

But merchants accounts not exceeding one ſheet, bills of exchange, invoices, bills of lading, (ſent or brought over ſea, 6 *G. c.* 21. *ſ.* 52.) ſhall be allowed without rate in the price of the letters. 9 *An. c.* 10. *ſ.* 13.

But patterns or ſamples of goods, or pieces of any thing, though not paper, incloſed in a letter, or affixed thereto, if under an ounce weight, ſhall pay as a double letter. 26 *G.* 2. *c.* 13. *ſ.* 7.

Penny poſt. 4. Within the limits of the penny poſt in *London*, ſhall be paid 1 d. (at putting in, and 1 d. at delivery, 4 *G.* 2. *c.* 33.) 9 *An. c.* 10. *ſ.* 6.

And the poſtmaſter general, and his deputies, may appoint a penny poſt office in any city or town and places adjacent, where they ſhall judge convenient; and may charge therein the ſame rates, as within the limits of the penny poſt office in *London*. 5 *G.* 3. *c.* 25. *ſ.* 11.

Provided,

Provided, that no parcel ſhall be carried by the penny poſt, exceeding the weight of four ounces, unleſs it be carrying to or from the general poſt office. *ſ.* 14.

5. And none but the poſtmaſter ſhall carry letters; on pain of 5l. for every offence, and 100l. a week beſides; (half to the king, and half with full coſts) to him that ſhall ſue in any court of record. 9 *An. c.* 10. *ſ.* 17, 19. None but the poſtmaſter to carry letters.

Except letters carried *gratis* by carriers or ſhipmaſters with goods, inſtruments out of any court, and letters ſent by friends in their journey, or by a ſpecial meſſenger. *id. ſ.* 2.

And except in the two univerſities: to and from which letters may be ſent, in manner as heretofore hath been uſed. *ſ.* 32.

6. No letters or packets ſhall be exempted from poſtage; Except ſuch as ſhall be ſent from or to the king: Exemptions from poſtage.

And ſuch, not exceeding the weight of two ounces, as ſhall be ſent during the ſitting of parliament, or within forty days before or after any ſummons or prorogation; which ſhall be ſigned, on the outſide thereof, by any member, and whereof the whole ſuperſcription ſhall be written by him (or in caſe of bodily infirmity, by ſome perſon by him appointed, of which he ſhall give notice to the poſtmaſter general):

Or directed to any member of either houſe of parliament at any of the places of his uſual reſidence, or at the place where he ſhall be at the time of delivery thereof, or at the houſe of parliament, or the lobby of either houſe:

Or to the offices of the treaſury, admiralty, war office, general poſt office; ſecretaries of ſtate, paymaſter general of the forces, clerk of the parliaments, clerk of the houſe of commons; or upon his majeſty's ſervice (indorſed by the proper officer.) 4 *G.* 3. *c.* 24. *ſ.* 1. 4. 5 *G.* 3. *c.* 25. *ſ.* 26.

Alſo this ſhall not extend to printed votes or proceedings in parliament, or printed news papers, ſent without covers, or in covers open at the ſides, ſigned on the outſide by any member of parliament, or directed to a member at any place whereof he ſhall have given notice to the poſtmaſter general. 4 *G.* 3. *c.* 24. *ſ.* 5.

Alſo clerks in the offices of the ſecretaries of ſtate and poſt office, being thereunto licenſed by the ſecretaries or poſtmaſter general reſpectively, may continue to frank votes and news papers as heretofore hath been uſual; provided the ſame be ſent without covers, or in covers open at the ſides. *ſ.* 6.

But

But if any papear or other thing be incloſed in ſuch printed paper, or any writing be thereon, except the ſuperſcription; the whole ſhall be charged with poſtage. *ſ.* 7.

Forging franks.

7. If any perſon ſhall counterfeit the handwriting of any perſon in the ſuperſcription, in order to avoid the payment of poſtage; he ſhall be guilty of felony, and tranſported for ſeven years. 4 *G.* 3. *c.* 24. *ſ.* 8.

Poſt Boy loitering upon the road.

8. If any poſt boy ſhall quit the mail, before his arrival at the next ſtage; or ſhall ſuffer any other perſon (except the perſon employed to guard the mail) to ride on the horſe or carriage; or ſhall loiter on the road, or ſhall not in all poſſible caſes convey the mail after the rate of ſix miles an hour at leaſt: he ſhall, on conviction by confeſſion or oath of one witneſs before one juſtice, be ſent to the houſe of correction, to be there kept to hard labour, not exceeding one month, nor leſs than 14 days. 5 *G.* 3. *c.* 25. *ſ.* 20.

Unlawfully collecting letters.

9. And if any poſt by ſhall by himſelf, or in combination with others, unlawfully collect any letters, or convey, or cauſe them to be conveyed; he ſhall, on conviction by confeſſion or oath of one witneſs before one juſtice, forfeit for every letter or packet 10 s. to the informer; if not forthwith paid on conviction, to be committed to the houſe of correction to hard labour, not exceeding two months, nor leſs than one. 5 *G.* 3. *c.* 25. *ſ.* 21.

Imbezzling money for letters poſt paid, or deſtroying the letters.

10. By the 5 *G.* 3. *c.* 25. If any perſon intruſted to take in letters and receive the poſtage thereof, ſhall imbezzle or apply to his own uſe any money received by him with ſuch letters for the poſtage thereof; or ſhall burn or otherwiſe deſtroy any letter or packet by him ſo taken in or received; or who, by virtue of his office, ſhall advance the rates upon letters or packets, and not duly account for the money received by him for ſuch advanced poſtage; he ſhall be deemed guilty of felony. *ſ.* 19.

And by the 7 *G.* 2. *c.* 50. If any perſon employed in any buſineſs of the poſt office ſhall take any letter or packet to be forwarded by the poſt, and receive any money therewith for the poſtage, ſhall burn or deſtroy any ſuch letter or packet; or ſhall advance the rate of poſtage upon any letter or packet, and not duly account for the money by him received for ſuch advanced poſtage; he ſhall be deemed guilty of felony. *ſ.* 3.

Money for poſtage how to be levied.

11. All ſums, not exceeding 5 l. that ſhall be due from any perſon for letters, or which ſhall be received for the carriage of letters, without anſwering the ſame to the receiver

ceiver general, ſhall be recovered before juſtices of the peace in the ſame manner as ſmall tithes: And ſuch debt ſhall be preferable in payment, before any debt to any private perſon. 9 *An. c.* 10. *ſ.* 30.

Stealing bills or other ſecurities for money out of letters.

12. If any perſon, employed in the buſineſs of the poſt office ſhall ſecrete, embezzle, or deſtroy any letter or packet, containing any bank note, bank poſt bill, bill of exchange, exchequer bill, South Sea or Eaſt India bond, dividend warrant of the bank or other company, navy or victualling or tranſport bill, ordnance debenture, ſeaman's ticket, ſtate lottery ticket, bank receipt for payment on any loan, note or aſſignment of ſtock in the funds, letter of attorney for receiving annuities or dividends, or for ſelling ſtock in the funds, or belonging to any company, American provincial bill of credit, goldſmith's or banker's note for payment of money, or other bond or warrant, draught, bill, or promiſſory note for payment of money, or ſhall ſteal and take the ſame out of any letter or packet; he ſhall be guilty of felony without benefit of clergy. 5 *G.* 3. *c.* 25. *ſ.* 17. 7 *G.* 3. *c.* 50. *ſ.* 1.

Robbing the mail.

13. If any perſon ſhall rob any mail, of any letter, packet, or bag; or ſhall ſteal and take from out of any mail or bag, or out of any poſt office, or houſe or place for the receipt or delivery of letters, although the ſame ſhall not appear to be a taking from the perſon, or on the highway, or in a dwelling houſe or out houſe belonging to a dwelling houſe, and although it ſhall not appear that any perſon was put in fear; he ſhall, nevertheleſs, be guilty of felony without benefit of clergy. 7 *G.* 3. *c.* 50. *ſ.* 2.

Riding poſt.

14. The poſtmaſters, and no other perſon, ſhall provide horſes and furniture, to let to hire to perſons riding poſt. 9 *An. c.* 10. *ſ.* 5.

(But this ſhall not extend to chaiſes duly licenſed, with horſes to draw the ſame, and horſes to accompany perſons carried in ſuch chaiſes. 22 *G.* 2. *c.* 25.)

And they may charge 3d. a mile for each horſe riding poſt, and 4d. a mile for the perſon riding as guide; and ſhall not charge for any bundle or parcel of goods not exceeding 80lb. weight, to be laid on the horſe rid by the guide; and ſhall not be obliged to carry above that weight. 9 *An. c.* 10. *ſ.* 14.

But if any poſtmaſter doth not or cannot furniſh perſons riding poſt with horſes, in half an hour after demand; ſuch perſons may furniſh themſelves elſewhere (provided that they take no horſes without the owner's conſent); and the poſtmaſter in ſuch caſe ſhall forfeit 5l; half to

the

the king, and half to him that ſhall ſue, with full coſts. *ſ.* 20, 21, 28.

Poſtmaſter not to meddle in elections.

15. No poſtmaſter ſhall, by word, meſſage, or writing, or in any other manner, endeavour to perſuade any elector to give, or diſſuade any elector from giving his vote for the choice of any perſon to ſerve in parliament, on pain of 100*l.* half to the informer, and half to the poor, and likewiſe of being incapacitated. 9 *An.* *c.* 10. *ſ.* 44.

Pound-breach. See Diſtreſs.
Powder for the hair. See Exciſe.

Præmunire.

What it is.

1. PRÆMUNIRE is ſo called from a word in the writ, *Præmunire facias præfatum* A. B. *quod ſit coram nobis, &c.* where *præmunire* is uſed *for præmonere*, to warn the perſon to appear, as is directed in the ſtatute of 27 *Ed.* 3. *c.* 1. hereafter following. 1 *Inſt.* 129.

Power of juſtices of the peace therein.

2. Notwithſtanding that *præmunire* is not within the letter of the commiſſion of the peace, yet inaſmuch as it is againſt the peace of the king and of the realm, any juſtice of the peace may, either on his own knowledge, or the complaint of others, cauſe any perſon to be apprehended for ſuch offence; and he may take the examination of the perſon ſo apprehended, and the information of all who can give material evidence againſt him, and put the ſame in writing, and bind over the witneſſes to the king's bench or gaol delivery; and certify his proceedings to the ſame court to which he ſhall bind over ſuch informers. 2 *Haw.* 39. *Hale's Pl.* 168.

Impeaching judgments in the king's courts, a præmunire.

3. By the 27 *Ed.* 3. *c.* 1. called the ſtatute of proviſors, They who ſhall draw any out of the realm in plea, whereof the cognizance pertaineth to the king's court, or which do ſue in any other court, to defeat or impeach the judgments given in the king's court, ſhall have a day containtaining the ſpace of two months, by warning to be made to them, by the ſheriffs or other officers, to appear to anſwer in their proper perſons for the contempt: And if they come not at the ſaid day in their proper perſon to be at the law, they, their procurators, attornies, executors, notaries, and maintainers, ſhall from that day forth be put out of the king's protection, and their lands, goods, and chattels forfeit to the king, and their bodies whereſoever they may be found ſhall be taken and impriſoned, and ranſomed at the king's

king's will. And upon the ſame a writ ſhall be made, to take them by their bodies, and to ſeize their lands, goods, and poſſeſſions, into the king's hands. And if it be returned, that they be not found, they ſhall be put in exigent, and outlawed.

Suing out foreign proceſs, a præmunire.

4. And by the 16 *R.* 2. *c.* 5. commonly called the ſtatute of *præmunire*, and to which the ſeveral ſubſequent ſtatutes do refer; both thoſe who purſue, or cauſe to be purſued, in the court of *Rome*, or elſewhere, any proceſſes or inſtruments, or other things whatſoever, which touch the king, againſt him, his crown and regality, or his realm; and alſo thoſe who ſhall bring, receive, notify, or execute them; and their fautors and abettors ſhall be out of the king's protection; and their lands and tenements, goods and chattels, forfeit to the king; and they ſhall be attached by their bodies, if they may be found, and brought before the king and his council, there to anſwer; or proceſs ſhall be made againſt them by *præmunire facias*, in manner as it is ordained in other ſtatutes of proviſors.

And in theſe two ſtatutes, as above recited, are contained the pains and penalties of what is called a præmunire.

Suing for temporal matters in the ſpiritual court, a præmunire.

5. And ſince theſe acts it hath been adjudged, that a ſuit in the eccleſiaſtical court (as for debt) was in caſe of præmunire. And that a perſon ſuing in the eccleſiaſtical court, for the forgery of a will, doth incur the danger of a præmunire; becauſe the party grieved might have his remedy by the common law. Alſo judgment againſt the defendant was given in a præmunire, for ſuing for tithes in the eccleſiaſtical court, alledging the ſame to be ſevered from the nine parts. 3 *Inſt.* 120, 121. But it ſeemeth, that a ſuit in that court, for a matter which appears not by the libel itſelf, but only by the defendant's plea, or other matter ſubſequent, to be of temporal cognizance, is not within the ſtatute; becauſe it appears not that either the plaintiff or judge knew it to be ſo. 1 *Haw.* 51, 52.

Refuſing to elect or conſecrate a biſhop.

6. By the 25 *H.* 8. *c.* 20. Refuſing to elect or conſecrate the perſon nominated by the king to a biſhoprick, is made a præmunire.

Suffragans exceeding their commiſſion.

7. By the 26 *H.* 8. *c.* 14. No ſuffragan ſhall exerciſe any juriſdiction, otherwiſe than by the biſhops commiſſions, on pain of a præmunire.

Delaying a ſuit on the ſtatute of monopolies.

8. To delay a ſuit on the ſtatute of monopolies. 21 *J.* *c.* 3. ſhall be a præmunire. *ſ.* 12.

Affirming that the parliament can make laws without the king.

9. By the 13 *C.* 2. *c.* 1. To affirm maliciouſly or adviſedly, by ſpeaking or writing, that both or either houſes of parliament have a legiſlative power without the king, is a præmunire.

10.

Sending priſoners out of the realm.

10. By the 31 *C.* 2. *c.* 2. No ſubject ſhall be ſent a priſoner out of the realm, on pain of a præmunire.

Affirming that the pretender hath any right to the crown.

11. By the 6 *An. c.* 7. If any perſon ſhall maliciouſly and directly, by preaching, teaching, or adviſed ſpeaking, affirm, that the pretender hath any right to the crown, or any other perſon otherwiſe than as by the acts of parliament, he ſhall incur a præmunire.

Other præmunires.

12. The offences above ſpecified are ſuch as do not fall in with the other titles of this book. Other offences incurring a præmunire, are inſerted under the titles to which they more properly belong; as in the titles, *Oaths*, *Gunpowder*; and eſpecially in the title *Popery*, under which there are many offences of this kind, occaſioned by the papal incroachments from time to time in this realm.

Judgment in præmunire.

13. The judgment in præmunire is, that the defendant *ſhall be from thenceforth out of the king's protection, and his lands and tenements, goods and chattels forfeited to the king, and that his body ſhall remain in priſon at the king's pleaſure.* 1 Inſt. 129.

Out of the king's protection] So odious was this offence formerly, that a man who was attainted of the ſame, might have been ſlain by any one without danger of law: becauſe it was provided by law, that a man might do to him as to the king's enemy, and a man may lawfully kill an enemy: and therefore by the 5 *El. c.* 1. it is enacted, that it ſhall not be lawful for any one to ſlay any perſon attainted in or upon a præmunire. 1 *Inſt.* 130.

But he is ſo far out of the king's protection, that he is diſabled to bring an action for any injury whatſoever. And no one knowing him guilty, can with ſafety give him aid, comfort, or relief. 1 *Inſt.* 129, 130. 1 *Haw.* 55.

And Mr. *Hawkins* ſays it has been queſtioned, whether he hath a right to demand ſurety of the peace. But *Lambard* and *Dalton*, which are the authorities he cites for it, incline to think that he hath ſuch right. *Lambard* alledges for it the ſtatute of the 5 *El.* abovementioned; and *Dalton* aſſerts it without doubting. *Lamb.* 80. *Dalt.* 272. 1 *Haw.* 126.

Lands and tenements——forfeited] Yet tenant in tail ſhall only forfeit lands during life: for albeit the ſtatute of the 16 *R.* 2. *c.* 5. enacteth, that lands and tenements ſhall be forfeited, that muſt be underſtood of ſuch an eſtate as he may lawfully forfeit, and that is during his own life. 1 *Inſt.* 130.

Corruption of blood.

14. Attainder in præmunire worketh no corruption of blood. 1 *Inſt.* 391.

Preſentment.

A Preſentment is that which the grand jury find and preſent to the court, without any indictment delivered to them; which is afterwards reduced into the form of an indictment, and in nothing elſe differs from an indictment.

There are other preſentments of churchwardens, conſtables, ſurveyors of the highways, and juſtices of the peace; all which may be ſeen under their proper titles.

Priſon and priſoner. See **Gaol.**

Priſon-breaking.

IT ſeemeth that at the common law all priſon-breaches were felonies, if the party were lawfully in cuſtody for any cauſe whatſoever. 2 *Haw.* 123.

But by the following ſtatute, which is called the ſtatute *de frangentibus priſonam*, the ſeverity of the common law is moderated; in the explication of which ſtatute, will be contained the whole learning relating to this ſubject.

The ſtatute is this: *Concerning priſoners which break priſon, the king willeth and commandeth, that none that breaketh priſon ſhall have judgment of life or member, for breaking of priſon only, except the cauſe for which he was taken and impriſoned did require ſuch judgment, if he had been convict thereupon, according to the law and cuſtom of the realm.* 1 Ed. 2. ſt. 2.

Concerning priſoners which break] Therefore if the priſon be broken by a ſtranger, and not by the priſoner, or by his procurement, this is no felony in the priſoner. *Hale's Pl.* 108.

Which break priſon] It ſeems clear, that any place whatſoever, wherein a perſon under a lawful arreſt for a ſuppoſed crime, is reſtrained of his liberty, whether in the ſtocks, or ſtreet, or in the common gaol, or the houſe of a conſtable, or private perſon, is properly a priſon within

this ſtatute; for impriſonment is nothing elſe but a reſtraint of liberty. 2 *Haw.* 124.

And therefore this extendeth as well to a priſon in law, as to a priſon in deed. 2 *Inſt.* 589.

But there muſt be an actual *breaking*; for if the door be open, and he goes out, it is not felony, but a miſdemeanor only. 2 *Inſt.* 589. 2 *Haw.* 125.

But if the priſon be fired without the privity of the priſoner, he may lawfully break it to ſave his life. *Hale's Pl.* 108.

Alſo it ſeems that no breach of priſon will amount to felony, unleſs the priſoner eſcape. 2 *Haw.* 125.

That none that breaketh priſon ſhall have judgment of life or member] That is, ſhall be guilty of felony. But nevertheleſs he is ſtill puniſhable as for a high miſpriſion, by fine and impriſonment; for it cannot be thought the meaning of the ſtatute, in ordaining that ſuch offences ſhall not be puniſhed as capital ones, to intend, that they ſhall not be puniſhed at all. 2 *Haw.* 128.

Nevertheleſs, by the 3 *Ed.* 1. *c.* 15. Thoſe who have broken priſon are not *bailable* by juſtices of the peace; and that for two reaſons: 1. Becauſe it carries a preſumption of guilt. And, 2. Becauſe it is a ſuperadded offence to the former for which they ſtood committed. 2 *H. H.* 133.

Except the cauſe for which he was taken and impriſoned did require ſuch judgment] This is to be intended of a *lawful* cauſe; and therefore *falſe impriſonment* is not within this act. 2 *Inſt.* 590.

Impriſonment is a reſtraint of a man's liberty under the cuſtody of another, by lawful warrant, in deed, or in law. Lawful warrant is, either when the offence appeareth by matter of record, as when the party is taken upon an indictment; or when it doth not appear by matter of record, as when a felony is done, and the offender by a lawful *mittimus* is committed to gaol for the ſame: But between theſe two caſes there is a great diverſity; for in the firſt caſe, whether any felony were committed or no, if the offender be taken by force of a *capias*, the warrant is lawful, and if he break priſon it is felony, although no felony were committed; but in the other caſe, if no felony be done at all, and yet he is committed to priſon for a ſuppoſed felony, and break priſon, this is no felony, for there is no *cauſe*. 2 Inſt. 590.

So

So that the cauſe muſt be juſt and not feigned, for things feigned require no judgment: Thus if a man give another a mortal wound, for which he is committed to priſon, and breaketh priſon, and the other dieth of the wound within the year, this death hath relation to the ſtroke; but becauſe relations are but fictions in law, and fictions are not here intended, this priſon-breaking is not felony. 2 *Inſt.* 591.

So that the offence for which the party was impriſoned muſt be a capital one at the time of the offence, and not become ſuch by a matter ſubſequent. 2 *Haw.* 126.

And the cauſe muſt be expreſſed in the *mittimus*, altho' not ſo certainly as in an indictment, yet with ſuch convenient certainty as it may appear judicially that the offence requireth ſuch judgment; as, not for felony generally, but for felony in ſtealing ſuch a horſe, and the like. 2 *Inſt.* 591.

But if the offence for which the party is committed, be ſuppoſed in the *mittimus* to be of ſuch a nature as requires a capital judgment, yet if in the event it be found to be of an inferior nature, and not to require ſuch a judgment, it ſeems difficult to maintain, that the breaking of the priſon, or a commitment for it, can be felony; for the words of the ſtatute are, *except the cauſe for which he was taken and impriſoned did require ſuch judgment*; and here it appears, that the offence which is the cauſe of his impriſonment, doth not require ſuch a judgment. 2 *Haw.* 126.

But if a man be committed by lawful warrant, for *ſuſpicion* of felony done, if he break priſon he may be indicted for that eſcape, albeit the commitment be for ſuſpicion of felony, and yet no judgment can be given againſt him for ſuſpicion, but for the felony itſelf, whereof he is ſuſpected. 2 *Inſt.* 592.

And an indictment that ſuch a perſon *feloniouſly broke the priſon* generally, is not good; but it ought to rehearſe the ſpecialty of the matter, that he being impriſoned for ſuch or ſuch a felony, broke the priſon. 2 *Inſt.* 591.

But if the party be only arreſted for, and in his *mittimus* charged with a crime which doth not require judgment of life or member, as petit larceny, or homicide by ſelf-defence or by miſadventure, and the offence be in truth no greater than the *mittimus* doth ſuppoſe it to

be, it is clear from the expreſs words of the ſtatute, that the breaking of the priſon cannot amount to felony. 2 *Haw.* 126.

But if a felony be made by a ſubſequent ſtatute, and an offender is committed thereupon; if he breaks priſon, it is felony. For ſince all breaches of priſon were felonies by the common law, which is reſtrained by this ſtatute in reſpect only of impriſonment for offences not capital; when an offence becomes capital, it is as much out of the benefit of the ſtatute, as if it had always been ſo. *Hal. Pl.* 108. 2 *Haw.* 126.

Alſo it is ſaid, that the party may be arraigned for priſon-breaking, before he be convicted of the crime for which he was impriſoned; for that it is not material whether he were guilty of ſuch crime or not; for the words of the ſtatute are, *for which he was taken and impriſoned.* 2 Haw. 127.

But if he is firſt indicted and acquitted of the principal felony, he ſhall not be indicted for the breach of priſon afterwards; for it being cleared that he was not guilty of the felony, he is in law as a perſon never committed for felony, and ſo his breach of priſon is no felony. 1 *H. H.* 612.

But the gaoler ſhall not be puniſhed as a felon for the party's breach of priſon, unleſs he voluntarily conſented to it; but it ſeems to be a negligent eſcape in the gaoler, for which he may be puniſhed by fine and impriſonment, becauſe there wanted either that due ſtrength in the gaol, or that due vigilance in the gaoler or his officers, that ſhould have prevented it: and if gaolers might not be puniſhed for this as a negligent eſcape, they would be careleſs either to ſecure their priſoners or to retake them that eſcape. 1 *H. H.* 601.

And therefore if a criminal endeavouring to break the gaol, aſſault his gaoler, he may be lawfully killed by him in the affray. 1 *Haw.* 71.

Indictment for priſon-breaking, by eſcaping from a conſtable.

THE *jurors for our lord the king upon their oath preſent, that* A. C. *late of* ——— *yeoman, conſtable of our ſaid lord the king in and for the town of* ——— *in the ſaid county, on the* ——— *day of* ——— *in the* ——— *year of the reign of* ——— *at* ——— *within the town and conſtablewick aforeaid*

ſaid in the county aforeſaid, did take and arreſt one A. O. *late of* ——— *labourer, on ſuſpicion of having committed a certain felony, in feloniouſly taking and carrying away one black gelding, the property of* ——— *of the value of* ——— *and thereupon he the ſaid* A. O. *under the cuſtody of him the ſaid* A. C. *the conſtable aforeſaid, was brought before* J. P. *Eſquire, one of the juſtices of our ſaid lord the king aſſigned to keep the peace in the ſaid county, and alſo to hear and determine divers felonies, treſpaſſes, and other miſdemeanors within the ſaid county committed, and he the ſaid* J. P. *by his warrant directed to the ſaid* A. C. *and others, did command the ſaid* A. C. *to carry and convey the ſaid* A. O. *to the gaol of our ſaid lord the king at* ——— *in the county aforeſaid, there to be ſafely kept, until he ſhould be lawfully delivered from thence; by virtue of which ſaid warrant, he the ſaid* A. O. *was taken and detained by him the ſaid* A. C. *and as he the ſaid* A. C. *was conveying and carrying him the ſaid* A. O. *to the gaol aforeſaid, afterwards, to wit, on the* —— *day of* ——— *in the year aforeſaid, he the ſaid* A. O. *at* ——— *aforeſaid in the county aforeſaid, with force and arms, did feloniouſly break away and eſcape from and out of the cuſtody of him the ſaid* A. C. *the conſtable aforeſaid, againſt the will of him the ſaid* A. C. *and againſt the peace of our ſaid lord the king, his crown and dignity.*

Indictment for breaking out of gaol.

THE *jurors for our lord the king upon their oath preſent, that* A. O. *late of* ——— *in the county aforeſaid, labourer, on the* ——— *day of* ——— *in the* ——— *year of the reign of* ——— *at* ——— *aforeſaid in the county aforeſaid, was arreſted, impriſoned, and detained, in the gaol of our ſaid lord the king, for a certain felony by him committed, that is to ſay, for the feloniouſly taking and carrying away one black gelding, the property of* ——— *of the value of* ——— *and that he the ſaid* A. O. *on the* ——— *day of* ——— *in the year aforeſaid, with force and arms, the aforeſaid gaol of our ſaid lord the king at* ——— *aforeſaid in the county aforeſaid feloniouſly did break, and thereby did eſcape from and out of the ſaid gaol, againſt the peace of our ſaid lord the king, his crown and dignity.*

Proceſs.

Proceſs by the commiſſion.

1. BY the commiſſion of the peace, the juſtices in ſeſſions have power *to make and continue proceſſes upon indictments, againſt the perſons indicted, until they can be taken, ſurrender themſelves, or be outlawed.*

Proceſs on indictments taken in the tourn.

2. And by the ſtatute of the 1 *Ed.* 4. *c.* 2. Indictments and preſentments taken in the ſheriff's tourn, ſhall be delivered to the next ſeſſions, who may award proceſs thereupon, in like form as if they had been taken before themſelves.

Proceſs by juſtices out of ſeſſions.

3. And the law alſo in ſeveral caſes in expreſs words directs proceſs to be made by juſtices out of ſeſſions; and in other caſes by neceſſary implication: as where a ſtatute doth give power to juſtices out of ſeſſions to inquire, hear, and determine, there they may make proceſs to cauſe the party to come and anſwer, otherwiſe they cannot proceed to hear and determine; and this may be either before or after preſentment or indictment as the ſeveral ſtatutes do require: Before preſentment or indictment it is called a *warrant*; after preſentment or indictment it is properly called *proceſs*. Dalt. c. 193.

Proceſs, what.

4. Commonly an indictment, being but an accuſation againſt a man, is of no force but only to put him to anſwer unto it. And hereof all proceſs hath the name, becauſe it *proceedeth* or goeth out upon former matter either original or judicial. *Lamb.* 519.

No need of proceſs, if the party is preſent.

5. And it ſeemeth plain, from the nature of the thing, that there can be no need of proceſs, where the defendant is preſent in court, but only where he is abſent. 2 *Haw.* 281.

To be in the king's name.

6. The proceſs ought to be in the name of the king. And if it iſſue from the king's bench, it ought to be under the teſte of the chief juſtice; and if it iſſue from any other court, there ſeems to be the ſame reaſon, that it ought to be under the teſte of the firſt in the commiſſion. 2 *Haw.* 283.

When returnable.

7. Upon an indictment in ſeſſions, (for a miſdemeanor, not being felony) there muſt be 15 days between the teſte and return of the *venire*; but if the entry be by conſent of parties, the *venire* may be returnable *immediate*, and the trial be the ſame day. 3 *Salk.* 371.

Proceſs for felony.

8. Proceſs on an indictment or appeal of death, is one *capias*, and then an exigent: But in the caſe of any other felony,

felony, then by the 25 *Ed.* 3. *c.* 14. two *capias's*, and then an exigent. *Hal. Pl.* 209. 2 *Haw.* 303. *Crown Cir.* 31.

9. The ordinary proceſſes upon all indictments of treſpaſs againſt the peace, or of other offences againſt penal ſtatutes, not being felony, or a greater offence, are as follows; Firſt, if the offender be abſent, a *venire facias*, which is but in the nature of a ſummons to cauſe the party to appear, ſhall be awarded, except where other proceſs is directed by ſome ſtatute. 2 *Haw.* 283. Proceſs under felony.

If it appear by the return of ſuch *venire*, that the party hath lands in the county, whereby he may be diſtrained, the *diſtreſs infinite* ſhall be awarded from time to time, till he do appear; and by force hereof he ſhall forfeit on every default ſo much as the ſheriff ſhall return upon him in iſſues. But if a *nihil* be returned on ſuch a *venire*, then three *capias's*, that is, a *capias*, *alias*, and *pluries*, ſhall iſſue. 2 *Haw.* 283.

Where the inhabitants of a pariſh are indicted or preſented, the proceſs is firſt a *venire*, then a *diſtringas*. Crown Cir. 21.

10. By the 21 *J.* *c.* 4. by which all popular actions on penal ſtatutes are reſtrained to their proper counties, the like proceſs in every popular action, bill, plaint, ſuit, or information, on a penal ſtatute, before the quarter ſeſſions (or higher courts), ſhall be awarded as in an action of treſpaſs *vi & armis* at the common law. Proceſs on informations.

And conſequently, the proceſs in all ſuch ſuits muſt be by attachment or *pone per vadios*; and after by *diſtreſs infinite*, where by the return the party appears to be ſufficient, otherwiſe by *capias*. 2 Haw. 284.

11. If a defendant appear to an indictment of felony, and afterwards before iſſue joined make an eſcape, either from his bail, or from priſon; the common *capias*, *alias*, and *pluries* ſhall be awarded againſt him, unleſs there had been an *exigent* before, in which caſe a new exigent ſhall be awarded. 2 *Haw.* 285. Proceſs on an eſcape.

12. The *exigent* ſhall not be *awarded againſt acceſſaries*, until the principal ſhall be attainted. 3 *Ed.* 1. *c.* 14. 2 *Haw.* 306. Proceſs againſt acceſſaries.

13. By the 8 *H.* 6. *c.* 10. *On indictments for treaſon, felony, or treſpaſs, againſt perſons dwelling in other counties than where the indictment is taken, before any exigent awarded, preſently after the firſt writ of* capias *awarded and returned, another writ of* capias *ſhall be awarded, directed to the ſheriff of the county whereof the perſon indicted was ſuppoſed* Proceſs in a foreign county.

poſed to be converſant by the ſame indictment, returnable before the ſame juſtices or others before whom he is indicted, at a certain day, containing the ſpace of 3 *months from the date of the ſaid laſt writ, where the counties are holden from month to month; and where they are holden from* 6 *weeks to* 6 *weeks, he ſhall have* 4 *months, until the return of the ſame writ: by which writ of ſecond* capias *it ſhall be commanded to the ſame ſheriff, to take the perſon indicted by his body, if he can be found within his bailiwick, and if he cannot be found within his bailiwick, that the ſaid ſheriff ſhall make proclamation in two counties before the return of the ſame writ, that he which is ſo indicted, ſhall appear before the ſaid juſtices or others, in the county, liberty, or franchiſe where he is indicted, at the day contained in the ſaid laſt writ of* capias, *to anſwer to the king of the felony, treaſon, or treſpaſs, whereof he is ſo indicted: After which ſecond writ of* capias *ſo ſerved and returned, if he which is ſo indicted come not at the day of the ſame writ of* capias *returned, the exigent ſhall be awarded. And every exigent and outlawry otherwiſe awarded or pronounced ſhall be void.*

And if any ſuch indictment ſhall be removed by certiorari, *then before the exigent awarded, preſently after ſuch firſt* capias *returned, another writ of* capias *ſhall be directed as before, returnable before the king in his bench.*

But this ſhall not extend to indictments, taken in the county of Cheſter.

Alſo if any perſon be indicted of felony or treaſon, and at the time of the ſame felony or treaſon ſuppoſed was converſant within the county whereof the indictment maketh mention, the like proceſs ſhall be made againſt the perſon ſo indicted, as hath formerly been uſed; that is, without ſending proceſs into the other county.

But every perſon indicted in the form aforeſaid, after he is duly acquit by verdict, ſhall have an action upon his caſe, againſt the procurer of ſuch indictment; and if ſuch procurer be attainted thereof, the plaintiff ſhall recover treble damages. Which ſeemeth to be upon account of the diſtance at which he is ſuppoſed to live, from the place where he is indicted, and conſequently his extraordinary trouble in that behalf.

Dwelling in other counties] If the defendant be named of *B.* and late of *C.* there is no need of any *capias* to the ſheriff of the county where *C.* lies, becauſe it appears that the defendant is at preſent converſant at *B.* But if a defendant be named of no certain place at preſent, but only late

late of *B.* and late of *C.* and late of *D.* being all of them in counties different from that wherein the proſecution is commenced, a *capias* ſhall go to the ſheriff of every one of thoſe counties. 2 *Haw.* 306.

Shall be void] Not utterly void, but only voidable by writ of error. 2 *Haw.* 306.

County of Cheſter] But it may be awarded into the counties palatine of *Lancaſter* and *Durham*; and it ſeems that it ſhall be directed to, and returned by the chancellor of *Lancaſter*, or biſhop of *Durham:* And it hath been ſaid, that if he will not return it, the exigent may be awarded as well as if he had returned it; becauſe the court (of the ſeſſions at leaſt) cannot compel him to return it, and the proſecution might be unreaſonably delayed, if the proceedings were to be ſtayed till he ſhould return it. 2 *Haw.* 305. *Hal. Pl.* 209, 210.

Mr. *Marrow* ſaith, that by the equity of this ſtatute, if a perſon, indicted in one county is impriſoned in another, the juſtices may award an *habeas corpus* to remove him before themſelves. *Lamb.* 526.

To be executed by the ſheriff.

14. Concerning the execution of the proceſs, it is laid down as a general rule, that where-ever the king is a party to the ſuit (as he certainly is to all informations and indictments), the proceſs ought to be executed by the ſheriff himſelf, and not by the bailiff of any franchiſe, whether it have the clauſe *non omittas* or not, and whether the defendant be within a franchiſe or in the county at large, for the king's prerogative ſhall be preferred to any franchiſe: But it is ſaid, that this is to be intended only where in the grant of the franchiſe no mention is made of cauſes to which the king is a party. 2 *Haw.* 284.

Breaking open doors.

15. And if the party be in an houſe, if the doors be ſhut, and the ſheriff (having given notice of his proceſs) demand admittance, and the doors be not opened, he may break open the doors and enter to take the offender. 2 *H. H.* 202.

Proceſs on a ſunday.

16. But no perſon, on the lord's day, ſhall ſerve or cauſe to be ſerved any writ, proceſs, or warrant, order, or judgment (except in caſes of treaſon, felony, or breach of the peace); but the ſervice thereof ſhall be void, and the perſon ſerving the ſame ſhall be liable to anſwer damages to the party grieved, in the ſame manner as if he had done it without any writ, proceſs, warrant, order, or judgment at all. 29 *C.* 2. *c.* 7. *ſ.* 6.

Proceſs diſcontinued.

17. It ſeems to be agreed, that every ſuit, whether civil or criminal, and alſo every proceſs in ſuch ſuit againſt jurors, ought to be properly continued from day to day, from its commencement to its concluſion, without any the leaſt gap or chaſm; and the ſuffering any ſuch gap or chaſm is properly called a *diſcontinuance*; and the continuing the ſuit by improper proceſs (as by a *capias* inſtead of a *diſtringas*), or by giving the parties an illegal day, is properly called a *miſcontinuance*; and if the juſtices, before whom the matter is depending, do not come on the day to which it is continued, it is ſaid to be *put without day*, and cannot be revived without a re-ſummons or re-attachment. 2 *Haw.* 298, 300.

Now proceſs may be diſcontinued ſeveral ways. As, 1. Where the ſecond is not teſted on the very ſame day, on which the firſt is returnable. 2. Where there is a ſeſſions intervening between the teſte and the return of a *capias*, that the defendant may not be impriſoned an unreaſonable time. But it is no objection to an *exigent*, that it is not returnable the next ſeſſions, becauſe it muſt allow time for five counties to be holden between its teſte and return. 3. Where after iſſue or demurrer, the court gives the party a day to a diſtant ſeſſions, without making any continuance to that immediately following. 4. Where the ſeſſions to which the ſuit is continued is adjourned, and the ſuit is not adjourned accordingly. 5. Where any of the parties are deſcribed in any continuance of the ſuit, whether on the roll, or by proceſs, by a name or addition variant from thoſe in the original, tho' only in one letter. 6. Where a *venire* or *diſtringas* are iſſued, without any award on the roll to warrant them. 2 *Haw.* 298, 299.

And it ſeems generally to be taken as an undoubted principle, That a diſcontinuance by ſuffering a total chaſm in the proceedings, whether on the roll. or in the proceſs, by not giving a freſh continuance inſtantly upon the determination of the precedent, ſhall never be aided by any appearance or pleading over: But it is holden by the greater number of authorities, that if the original be good, and the defendant preſent in court, he ſhall be compelled to anſwer to ſuch original, let the proceſs whereon he came in, or the execution of it, be never ſo erroneous or defective, ſo that it never were diſcontinued, for the end of proceſs is to compel an appearance, and the end being ſerved, and a legal charge appearing againſt the defendant no way diſcontinued, the law will not ſo far regard a ſlip in the proceſs, as to let the defendant out of court, in order only to have him brought in again in better form. 2 *Haw.* 300.

18. The proceſſes (as well of *capias* as of outlawry) may be ſtayed by a *ſuperſedeas* iſſuing from other juſtices (out of ſeſſions) teſtifying that the party hath come before them, and hath found ſureties for his appearance to anſwer to the indictment, or to pay his fine. *Dalt. c.* 193. Proceſs ſtayed by putting in bail.

And it ſeemeth that even any one juſtice may bail perſons indicted at the ſeſſions, for any offence under the degree of felony; for that the ſtatutes relating ſpecially to the power of juſtices in granting bail, do not in this caſe ſeem to take away the power, which one juſtice had before the making of the ſaid ſtatutes. 2 *Haw.* 103.

19. Judgment of outlawry is given by the coroner, at the fifth county court, upon the party's not appearing to the *exigent* (which is a writ commanding the ſheriff to cauſe the defendant *(exigi)* to be *demanded* from county court to county court, until he be outlawed). And ſuch judgment is entered thus, *Therefore by the judgment of the coroner of our lord the king of the county aforeſaid, he is outlawed.* 2 Haw. 446. Proceſs of outlawry.

20. The word *outlaw* (*utlaghe*) *utlagatus*, cometh not immediately from the Latin *lex*, but is derived to us through the Saxon *laga*, which ſignifieth *law*. And a perſon outlawed ſignifies one that is out of the protection of the king, and out of the aid of the law. Meaning of the word outlaw.

21. And a man which is outlawed is called outlawed, but a woman which is outlawed is called waived, and not *utlagata*; for that women are not ſworn in leets or tornes, as men which are of the age of 12 or more are; and therefore men may be called *utlagati*, that is, *extra legem poſiti*, but women are *waviatæ*, that is, *derelictæ*, left out or not regarded, becauſe they were not ſworn to the law: wherein it is to be noted, that of ancient time a man was not ſaid to be within the law, that was not ſworn to the law, which is intended of the oath of allegiance in the leet. 1 *Inſt.* 122. A woman outlawed.

And hence it is, that a man under the age of 12 years, cannot be outlawed. 1 *Inſt.* 122.

22. Proceſs of outlawry lies in all indictments of treaſon or felony, and on all returns of a reſcous; and alſo on all indictments of treſpaſs with force and arms; and it ſeems probable, that it lies on an indictment of conſpiracy, or deceit, or any other crime of a higher nature than a treſpaſs with force and arms; but not on any indictment for a crime of an inferior nature. And it ſeems agreed, that it lies not on any action on a ſtatute, unleſs it be given by ſuch ſtatute, either expreſly, as in the caſe of a *præmunire*, or impliedly, For what outlawry may be.

pliedly, as where a recovery is given by an action wherein ſuch proceſs lay before, as on a writ of treſpaſs for a forcible entry, on the 8 *H.* 6. *c.* 9. becauſe the ſtatute expreſly gives a recovery by ſuch writ, and ſuch proceſs lies in it by the common law. 2 *Haw.* 302, 303.

Outlawry proclaimed at the ſeſſions.

23. In every *action perſonal* wherein any exigent ſhall be awarded out of any court, one writ of proclamation ſhall be awarded out of the ſame court, having day of teſte and return as the writ of exigent ſhall have, directed and delivered of record to the ſheriff where the defendant dwells; which writ of proclamation ſhall contain the effect of the action: And the ſheriff ſhall make one proclamation in the open county court, and another at the general quarter ſeſſions where the defendant dwells, and another a month at leaſt before the *quinto exactus*, by virtue of the ſaid writ of exigent, at or near the moſt uſual door of the church or chapel where the defendant ſhall be dwelling at the time of the exigent awarded, upon a *ſunday* immediately after divine ſervice. 31 *El. c.* 3.

Alſo, upon iſſuing any exigent out of any of the king's courts, againſt any perſon for a *criminal* matter, before judgment or conviction, there ſhall alſo iſſue a writ of proclamation, bearing the ſame teſte and return, where the perſon in the record of proceeding is mentioned to inhabit, according to the form of the 31 *El. c.* 3. which writ of proclamation ſhall be delivered to the ſheriff three months before the return of the ſame. 4 & 5 *W. c.* 22. *ſ.* 4.

Return of the outlawry.

24. If there are two coroners in a county, or more, one may execute the writ, as in caſe of an exigent, but the return muſt be in the name of the coroners. 2 *H. H.* 56.

And the return of the outlawry muſt be certain: It muſt ſhew where the county court was held, and in what county; and muſt return the day, and year of the king to every *exactus*. 2 H. H. 203.

And alſo the ſheriff's name and office muſt be ſubſcribed to the return of the exigent. 2 *H. H.* 204.

Capias utlagatum.

25. It is ſaid, that the juſtices in ſeſſions cannot iſſue a *capias utlagatum*, but muſt return the record of the outlawry into the king's bench, and there proceſs of *capias utlagatum* ſhall iſſue. 2 *H. H.* 52.

But in *T.* 10 *J.* The opinion of all the court of common pleas was, that if one be outlawed before the juſtices of the peace on an indictment of felony, they may award a *capias utlagatum*, and ſo was the opinion of *Periam* chief baron, and all the court of the exchequer: for they that have power

to

to award proceſs of outlawry, have alſo power to award a *capias utlagatum*, as incident to their authority and juriſdiction. 12 *Co.* 103.

26. If a perſon be outlawed at the ſuit of one man, all men ſhall take advantage of this perſonal diſability. 1 *Inſt.* 128. Conſequences of outlawry;

But ſuch diſability abateth not the writ, but only diſableth the plaintiff, until he obtain a charter of pardon. 1 *Inſt.* 128.

27. Upon outlawry in treaſon or felony, the offender ſhall loſe and forfeit as much as if he had appeared, and judgment had been given againſt him, as long as the outlawry is in force. 2 *Haw.* 446. For treaſon, or felony.

28. But the outlawry for a miſdemeanor, doth not inure as a conviction for the offence, as it doth in caſes of treaſon and felony; but as a conviction of the contempt for not anſwering, which contempt is therefore puniſhed, not by fine as a conviction for the offence, but by forfeiture of goods and chattels for the contempt. *K.* and *Tippin*, 1 *W.* 2 *Salk.* 494. For an inferior offence.

29. The very iſſuing of the exigent, in caſe of treaſon or felony, gives to the king the forfeiture of the goods of the party, from the time of the teſte of the writ of exigent: and the forfeiture by the exigent awarded ſtands, although the indictment be quaſhed, until there be a judgment of reverſal on a writ of error; becauſe the king's title being of record, muſt be avoided by a record. 2 *H. H.* 204, 205. Goods forfeited from the time of iſſuing the exigent.

30. And as the award of the exigent gives the forfeiture of the goods, ſo the outlawry gives the forfeiture or loſs of the lands of the party outlawed, to wit, in caſe of outlawry of treaſon his lands are forfeited to the king, of whomſoever they are held; and in caſe of outlawry of felony, to the lord by eſcheat, of whom they are immediately holden. 2 *H. H.* 206. Lands forfeited from the time of the outlawry.

31. But it muſt be remembred, that the bare judgment of outlawry by the coroner, without the return thereof of record, is no attainder, nor gives any eſcheat; but it muſt be returned by the ſheriff, with the writ of *exigi facias*, and the return indorſed. 2 *H. H.* 206. Or elſe it muſt be removed by certiorari: for the judgment given by the coroner in the county court is not matter of record, that court not being a court of record. 1 *Inſt.* 288. But the outlawry muſt be firſt returned.

32. And by the outlawry all *perſonal* chattels are veſted in the king by forfeiture; but *real* chattels, or freehold eſtates And after inquiſition found.

eſtates are not veſted in the king, till after inquiſition found. 3 *Salk.* 262.

Whether it is lawful to kill an outlaw.

33. In ancient times no man could have been outlawed but for felony, the puniſhment whereof was death; and upon this account an outlawed man was called *wolfeſhead*, becauſe he might be put to death by any man, as a wolfe that hateful beaſt might. But in the beginning of the reign of K. *Ed.* 3. it was reſolved by the judges, for avoiding of inhumanity, and of effuſion of chriſtian blood, that it ſhould not be lawful for any man but the ſheriff, having lawful warrant, to put to death any man outlawed, though it were for felony; and if he did, he ſhould undergo ſuch pain of death, as if he had killed any other man: and ſo the law continueth to this day. 1 *Inſt.* 28.

Judges of aſſize may award execution of perſons outlawed before juſtices of the peace.

34. If a man be indicted before juſtices of the peace, and thereupon outlawed, and is taken and committed to priſon, the juſtices of gaol-delivery may award execution of this priſoner; for they are conſtituted to deliver the gaol. 4 *Inſt.* 166. *Hales's Pl.* 158. 2 *H. H.* 35.

Clergy in caſes of outlawry.

35. Where clergy is allowable, it ſhall be as much allowed to one who is outlawed, as to one who is convicted by verdict or confeſſion. 2 *Haw.* 343.

But a ſtatute taking the benefit of clergy from thoſe who ſhall be found guilty, doth not thereby take it from thoſe who are outlawed. 2 *Haw.* 343.

But by the 3 & 4 W. c. 9. ſ. 2. *If any perſon be indicted of any offence, for which, by any former ſtatute, he is excluded from clergy, upon conviction; if he ſhall be outlawed thereupon, he ſhall not have his clergy.*

By any former ſtatute] Hereby it appears, that this extends not to offences made felonies by ſtatutes ſubſequent to this ſtatute. 2 *Haw.* 348.

Perſon outlawed cannot be plaintiff.

36. Where a perſon is outlawed, the defendant may ſhew all the matter and outlawry returned of record, and demand judgment if he ſhall be anſwered, becauſe he is out of the law, to ſue an action during the time that he is outlawed. 1 *Inſt.* 128.

Cannot be a juror.

37. It ſeems to be a good challenge of a juror, that he is outlawed, either for a criminal matter, or as ſome ſay, in a perſonal action; but not a principal challenge, but only to the favour, unleſs the record of the outlawry be produced. 2 *Haw.* 215, 417.

May be a witneſs.

38. But it ſeems clear, that outlawry in a *perſonal* action is not a good exception againſt a witneſs, as it is againſt a juror. 2 *Haw.* 443.

39. An

39. An outlawed perſon may make a will, and have executors or adminiſtrators. *Cro. El.* 575. May make a will.

And an executor may reverſe the outlawry of the teſtator, where he was not lawfully outlawed. 1 *Leon.* 325.

40. Outlawry may be reverſed ſeveral ways; as by procuring a *ſuperſedeas* and delivering it to the ſheriff before the *quinto exactus*, or by ſhewing any matter apparent on record which makes the outlawry erroneous, as the want of an original, or the omiſſion of proceſs, or want of form in a writ of proclamation, or a return by a perſon appearing not to be ſheriff, or a variance between the original and exigent or other proceſs, or by a miſnomer, or want of addition. 2 *Haw. c.* 50. Reverſing outlawry.

41. And upon a writ of error upon an outlawry in felony, the party outlawed muſt render himſelf in cuſtody, and pray the allowance of the writ of error in perſon: and if the outlawry be reverſed, he ſhall he put to anſwer the indictment. 2 *H. H.* 209. In what caſe the party muſt appear perſonally to reverſe it.

But by the 4 & 5 *W. c.* 18. one outlawed, except for treaſon or felony, need not appear in perſon to reverſe an outlawry, but by an attorney. 2 *Salk.* 496.

42. There is another kind of proceſs out of a court of record, againſt offenders, called *attachment*, which is generally for contempt; which belongs to title **Attachment.** Other kinds of proceſs.

The proceſs againſt *jurors*, may be ſeen in the title **Jury.**

And the proceſs againſt *witneſſes*, in title **Evidence.**

Forms of proceſs; and firſt of a *Venire.*

GEORGE *the third, by the grace of God, of* Great Britain, France, *and* Ireland, *king, defender of the Faith, and ſo forth, To the ſheriff of the county of* Weſtmorland, *greeting. We command you, that you omit not, by reaſon of any liberty in your bailiwick, but that you cauſe* A. O. *of* —— *in your ſaid county, yeoman, to come before our juſtices aſſigned to keep our peace, and alſo to hear and determine divers felonies, treſpaſſes, and other miſdemeanors in the ſaid county committed, at* —— *in your ſaid county, on the* —— *day of* —— *next enſuing, to anſwer unto us upon certain articles preſented againſt him the ſaid* A. O. *And have you there then this precept. Witneſs* J. P. *and* K. P. *at* —— *the* —— *day of* —— *in the* —— *year of our reign.*

And

And upon this *venire*, if the defendant be returned ſufficient, and maketh default, then a *diſtringas* ſhall be awarded, and ſo the ſame proceſs infinite, until he come in: But if a *nihil habet* be returned at the firſt, then after the *venire*, there ſhall go out a *capias*, *alias*, *pluries*, and *exigent*. Dalt. Sher. 160.

Form of a *Diſtringas*.

GEORGE *the third, by the grace of God, of* Great Britain, France, *and* Ireland, *king, defender of the faith, and ſo forth. To the ſheriff of the county of* ——— *greeting. We command you, that you omit not, by reaſon of any liberty in your bailiwick, but that you enter the ſame, and* diſtrain A. O. *of* ——— *in your county, yeoman, by all his lands and tenements* &c. *and that you anſwer for the iſſues thereof* &c. *and that you have his body before our juſtices aſſigned* [and ſo on, as before in the *venire*.]

But if a *nihil* (as hath been ſaid) be returned at firſt upon the *venire facias*; then a *capias* ſhall iſſue, thus:

GEORGE *the third, by the grace of God, of* Great Britain, France, *and* Ireland, *king, defender of the faith, and ſo forth: To the ſheriff of the county of* ——— *greeting. We command you, that you omit not, by reaſon of any liberty in your bailiwick, but that you enter the ſame, and* take A. O. *of* ——— *in your county, yeoman, if he ſhall be found in your bailiwick, and him cauſe to be ſafely kept; ſo that you have his body before our juſtices aſſigned to keep our peace, and alſo to hear and determine divers felonies, treſpaſſes, and other miſdemeanors in the ſaid county committed, at* ——— *in your county, on the* ——— *day of* ——— *next enſuing, to anſwer unto us concerning divers treſpaſſes, contempts, and offences, of which he is indicted. And have you there then this writ. Witneſs* J. P. *and* K. P. *at* ——— *the* ——— *day of* ——— *in the* ——— *year of our reign.*

At which day A. S. *knight, ſheriff of the county aforeſaid, returned that he is not found in his bailiwick, and he did not come. Therefore it is commanded as before.*

Note; The cauſe why the entry is made, *and he did not come*, is, becauſe the party may appear voluntarily, and ſo avoid the attachment or arreſting of his body.

The

The *Alias Capias.*

GEORGE ——— *To the Sheriff* ——— *We command you, as we before commanded you, that you omit not* ——— (as before).

At which day ——— (as before); *and he did not come, Therefore it is commanded to the ſheriff, as it hath been often commanded,* &c.

The *Pluries Capias.*

GEORGE, &c. *To the Sheriff,* &c. *We command you, as we have often commanded you, that you omit not* (as before).

At which day A. S. *knight, the ſheriff aforeſaid, returned, that the aforeſaid* A. O. *is not found in his bailiwick, and he did not come. Therefore it is commanded, that you cauſe to be demanded,* &c.

The *Exigent.*

GEORGE, &c. *To the Sheriff,* &c. *greeting. We command you, that you cauſe* A. O. *of* ——— *in your county, yeoman, to be* demanded, *until, by the law and cuſtom of our kingdom of* England, *he be outlawed, if he ſhall not appear; and if he ſhall appear, that then you take him, and cauſe him to be ſafely kept, ſo that you have his body before our juſtices aſſigned to keep our peace, and alſo to hear and determine divers felonies, treſpaſſes, and other miſdemeanors in your ſaid county committed, at the general quarter ſeſſions of the peace of your county, next after the feaſt of* ——— *next enſuing, to be held, whereſoever in the ſame county the ſaid ſeſſions ſhall happen to be holden, to anſwer unto us of divers treſpaſſes, contempts, and offences, of which he is indicted. And have you there then this writ. Witneſs Sir* J. P. *baronet, at* ———, *in the ſaid county, the* ——— *day of* ———, *in the* ——— *year of our reign.*

At which day A. S. *knight, ſheriff of the county aforeſaid, returned, that at the county holden at* ———, *the* ——— *day of* ———, *in the* ——— *year of the reign of our lord the king that now is, and ſo at four other counties then next following, there holden, the aforeſaid* A. O. *was demanded, and did not appear. Therefore, by the judgment of the coroner of our ſaid lord the king, in the county aforeſaid, he was outlawed.*

Process.

The *Capias Utlagatum.*

GEORGE, &c. *To the Sheriff*, &c. *greeting. We command you, that you omit not, by reaſon of any liberty in your county, but that you take* A. O. *late of* ——, *in your county, labourer, if he ſhall be found within your county, and him cauſe ſafely to be kept, ſo that you have his body before the keepers of our peace and our juſtices aſſigned to hear and determine divers felonies, treſpaſſes, and other miſdemeanors in your county committed, at* ——— *the* ——— *day of* ——— *to ſtand right in our court before our juſtices aforeſaid, upon a certain outlawry againſt him the ſaid* A. O. *promulged, at our ſuit, for certain felonies* (or *treſpaſſes*) *whereof he was convicted the* ——— *day of* ———. *And have you then there this writ. Witneſs &c.*

Profaneneſs. See **Blaſphemy.**

Prophecies.

IF any perſon ſhall adviſedly and directly advance, publiſh, and ſet forth by writing, printing, ſinging, or any other open ſpeech or deed, any fond, fantaſtical, or falſe prophecy, upon or by the occaſion of any arms, fields, beaſts, badges, or ſuch other like things accuſtomed in arms, cognizances, or ſignets, or upon or by reaſon of any time, year, or day, name, bloodſhed, or war, to the intent thereby to make any rebellion, inſurrection, diſſenſion, loſs of life, or other diſturbance in the realm; and ſhall be convicted thereof before a judge of aſſize, or juſtice of the peace, within ſix months after the offence committed, he ſhall for the firſt offence be impriſoned for a year, and forfeit 10l. and for the ſecond offence, ſhall be impriſoned for life, and forfeit his goods: half the forfeitures to the king: and half to him who ſhall ſue for them in any court of record. 5 *El. c.* 15.

Mr. *Barlow* thinks that the carrying of white roſes on the tenth of *June*, comes within the purview of this ſtatute.

The intent of the act was, to aboliſh certain fooliſh and ſuperſtitious notions which prevailed in the times of ignorance, as were ſet forth in a ſtatute made in the 33

H. 8. *c.* 14. reciting,—Where divers and ſundry perſons, making their foundation by prophecies, have taken upon them a knowledge (as it were) what ſhall become of them which bear in their arms, cognizance, or badge,—fields, beaſts, fowls, or any other thing which hath been uſed or accuſtomed to be put in any of the ſame; or, in and upon the letters of their names, have deviſed, deſcanted, and practiſed to make folk think, that by their untrue gueſſes it might be known, what good or evil things ſhould come, happen, or be done, by or to ſuch perſons as bore or had ſuch badges or cognizances, or had ſuch letters in their names; to the great peril and deſtruction of ſuch noble perſonages, of whom ſuch falſe prophecies have or ſhould hereafter be ſet forth, whereby in times paſt many noblemen have ſuffered, and (if their prince would give any ear thereto) might hap to do hereafter: And therefore enacted, that he who ſhould do ſo, ſhould be guilty of felony without benefit of clergy.

This ſtatute was repealed in the lump by the 1 *Ed.* 6. *c.* 12. which repealed all ſtatutes making any offences felony from the firſt year of the reign of king Henry the eighth. And the ſubſtance thereof was re-enacted, with a mitigation of the penalty, by the 3 & 4 *Ed.* 6. *c.* 15. Which ſtatute expiring, the 5 *El. c.* 15. was enacted as above.

Proteſtant Diſſenters. See Diſſenters.

Publick Worſhip.

1. IMpugners of the book of common prayer, of the 39 articles, of the rites and ceremonies of the church of *England*, of the eſpiſcopal government of the church, or of the form of ordering and conſecrating archbiſhops and biſhops, ſhall be *ipſo facto* excommunicated, and not reſtored but upon repentance, and publick recantation. *Can.* 4, 5, 6, 7, 8. Impugners of the rites of the church.

2. If any perſon ſhall ſpeak unreverently of the ſacrament of the lord's ſupper, he ſhall ſuffer impriſonment, and make fine and ranſom at the king's will. And three juſtices (1 Q.) may take information by the oaths of two Speaking irreverently of the ſacrament.

witneſſes; and afterwards, at the ſeſſions, may enquire thereof by the oaths of 12 men upon indictment. And they ſhall, at the ſeſſions where the offender ſhall be indicted, direct a writ to the biſhop to appear by himſelf or deputy at the trial. But no perſon ſhall be moleſted, but within three months after the offence committed. 1 *Ed.* 6. *c.* 1.

Penalty of 12 d. a ſunday for not reſorting to church.

3. All perſons, having no lawful or reaſonable excuſe to be abſent, ſhall reſort to their pariſh church or chapel, or upon reaſonable let thereof, to ſome uſual place where divine ſervice ſhall be performed, according to the liturgy and practice of the church of *England*, upon every *ſunday* and holiday; on pain of puniſhment by the cenſures of the church, or of forfeiting 1 s. for every offence to the poor, to be levied by the churchwardens by diſtreſs. 1 *El. c.* 2. *ſ.* 14, 24. Except diſſenters qualified by the act of toleration. 1 *W. c.* 18.

And he who is abſent from his own pariſh church, ſhall be put to prove where he went to church. 1 *Haw.* 13.

And any juſtice of the peace, on proof unto him made (in one month after default in coming to church on *ſundays*) by confeſſion, or oath of witneſs, may call the party before him; and if he ſhall not make a ſufficient excuſe, and due proof thereof, to the juſtice's ſatisfaction, ſuch juſtice may give warrant to the churchwarden to levy 12 d. to the uſe of the poor, by diſtreſs. For want of diſtreſs, commitment till paid. 3 *J. c.* 4. *ſ.* 27, 28.

Penalty of 20 l. a month, for not reſorting to church.

4. Every perſon above the age of 16 Years, who ſhall not repair to ſome church, chapel, or uſual place of common prayer, being convicted thereof before the judges of aſſize, or juſtices in ſeſſions, ſhall forfeit 20 l. a month, one third to the king, one third to the maintenance of the poor of the pariſh, and of the houſes of correction, and of impotent and maimed ſoldiers, as the lord treaſurer, chancellor, and chief baron of the exchequer ſhall order, and one third to him who ſhall ſue in any court of record. If not paid in three months after judgment, he ſhall be impriſoned till he pay or conform himſelf to go to church. 23 *El. c.* 1. *ſ.* 5, 8, 11. 29 *El. c.* 6. *ſ.* 7.

And this penalty of 20 l. a month diſpenſed not with the forfeiture of 12 d. a *ſunday*; for both may well ſtand together; and the 12 d. is immediately forfeited upon the abſence of each particular day. 1 *Haw.* 13.

And every offender in not repairing to divine ſervice, having been once convicted (and not conforming) ſhall pay

pay 20l. a month into the exchequer, in the term of *Eaſter* or *Michaelmas* which ſhall be next after ſuch conviction; and alſo ſhall, without any other indictment or conviction, for every month after ſuch conviction, ſo long as he ſhall not conform, pay into the exchequer in every *Eaſter* and *Michaelmas* term, as much as ſhall then remain unpaid, after ſuch rate of 20l. a month: And if default ſhall be made in any part of ſuch payment, the king may by proceſs out of the exchequer, ſeize all the goods, and two parts of the land, of ſuch offender. 29 *El. c.* 6. *ſ.* 3, 4, 5, 6. 3 *J. c.* 4. *ſ.* 8, 9.

Or the king may refuſe the 20l. a month, tho' it be duly tendered, and ſeize two parts of the lands at his option. 3 *J. c.* 4. *ſ.* 11.

But copyhold lands are not within theſe ſtatutes, in reſpect of the prejudice which would accrue to the lord, by the loſs of his ſervices. 1 *Haw.* 14.

And every perſon who ſhall uſually on *ſundays* have in his houſe divine ſervice as eſtabliſhed by law, and be thereat himſelf uſually preſent, and ſhall four times a year go to the pariſh church or other common church or chapel, ſhall not incur any penalty for not repairing to church. 23 *El. c.* 1. *ſ.* 12.

And this alſo ſhall not extend to qualified proteſtant diſſenters. 1 *W. c.* 18.

Penalty for harbouring a recuſant.

5. Every perſon who ſhall retain in his ſervice, or ſhall relieve, keep, or harbour in his houſe, any ſervant, ſojourner, or ſtranger, who ſhall not repair to church, but ſhall forbear for a month together, not having reaſonable excuſe, ſhall forfeit 10l. for every month he ſhall continue in his houſe ſuch perſon ſo forbearing. And the juſtices in ſeſſions may determine the ſame. 3 *J. c.* 4. *ſ.* 32, 33, 34.

Recuſant diſabled as to offices.

6. No recuſant convict ſhall practice law or phyſick, nor ſhall be judge or miniſter of any court, or bear any military office by land or ſea; and ſhall forfeit for every offence 100l. And ſhall alſo be diſabled to be executor, adminiſtrator, or guardian. 3 *J. c.* 5. *ſ.* 8. 22.

Recuſant conforming.

7. A recuſant conforming himſelf ſhall be diſcharged of all penalties, which he might otherwiſe ſuſtain by reaſon of his recuſancy. 1 *J. c.* 4. *ſ.* 2.

Publick worſhip in the navy.

6. All commanders, captains, and officers at ſea, ſhall cauſe the publick worſhip of almighty God, according to the liturgy of the church of *England*, to be performed in their reſpective ſhips: And prayers and preachings by the

the chaplains ſhall be performed diligently. 22 *G.* 2. *c.* 33. *art.* 1.

Qualification of lecturers.

9. No perſon ſhall be received as a lecturer, or allowed to preach or read any lecture or ſermon, without licence from the biſhop, and aſſenting to the 39 articles, and reading the common prayer before his firſt ſermon, and on the firſt lecture day of every month: on pain of three months impriſonment, for every offence, by two juſtices of the peace on certificate from the biſhop of the offence committed. 13 & 14 *C.* 2. *c.* 4. *ſ.* 19, 20, 21.

Diſturbers of publick worſhip.

10. By the 1 *Mar. ſeſſ.* 2. *c.* 3. If any perſon ſhall diſturb *a preacher in his ſermon* by word or deed, he ſhall be apprehended and carried before a juſtice of the peace, who ſhall commit him to ſafe cuſtody, and within ſix days, he and another juſtice ſhall examine the fact, and if they find him guilty by two witneſſes, or confeſſion, they ſhall commit him to gaol for three months, and further to the next ſeſſions; and if at the ſeſſions he repents and is reconciled, he ſhall be diſcharged on finding ſureties for his good behaviour for a year; if not, he ſhall be continued in gaol till he does; ſaving the eccleſiaſtical juriſdiction; and he ſhall not be puniſhed both ways.

And this ſtatute, though made in queen *Mary*'s reign, extendeth to the divine ſervice now eſtabliſhed. *Gibſ.* 372.

And by the 1 *W. c.* 18. *ſ.* 18. If any perſon ſhall willingly and of purpoſe, come into any church, chapel, or *other congregation permitted by the act of toleration*, and diſquiet and diſturb the ſame, or miſuſe any preacher or teacher; he ſhall on proof thereof before one juſtice, by two witneſſes, find two ſureties to be bound by recognizance in 50 l. and in default thereof ſhall be committed till the next ſeſſions, and on conviction there of the ſaid offence, he ſhall forfeit to the king 20 l.

But it ſhall be lawful for all men, as well in churches, chapels, oratories, or other places, to uſe openly any pſalms or prayer taken out of the bible, at any due time, not letting or omitting thereby the ſervice. 2 & 3 *Ed.* 6. *c.* 1. *ſ.* 7.

And the court of king's bench refuſed to grant a certiorari, to remove an indictment at the ſeſſions, for a perſon not behaving himſelf modeſtly and reverently at the church, during divine ſervice; which altho' puniſhable by eccleſiaſtical cenſures, yet the court conceived it a proper cauſe within cognizance of the juſtices of the peace. 1 *Keb.* 491. And this was before the abovementioned ſtatute of the 1 *W. c.* 18.

11. No

11. No clergyman ſhall be arreſted in any church or churchyard, whilſt he attends to divine ſervice; on pain of the impriſonment of the offender and ranſom at the king's will, and gree to the party arreſted. 50 *Ed.* 3. *c.* 5. 1 *R.* 2. *c.* 15. Arreſting a clergyman attending divine ſervice.

But the arreſt notwithſtanding, if not on a *ſunday*, is good in law. *Watſon*, *c.* 34.

Purveyors

1. ANciently the king's court was ſupplied with neceſſaries from the ancient demeſnes of the crown; and in reſpect thereof, the tenants of thoſe lands had many privileges, which they ſtill enjoy: But this method being found to be troubleſome and inconvenient, was by degrees diſuſed; and afterwards the king was wont to appoint certain officers to buy-in proviſions for his houſhold, who were called purveyors, and claimed many privileges by the prerogative of the crown. 2 *Inſt.* 542. 1 *Haw.* 114. Abuſes of purveyors.

2. The ſeveral laws which reſtrained the exorbitances of theſe purveyors, make up a pretty large title in the old books; but theſe laws proving ineffectual to remedy the evil complained of, at length by the ſtatute of the 12 *C.* 2. *c.* 24. purveyance was entirely taken away: By which it is enacted, that no ſum of money, or other thing, ſhall be taken for any proviſion, carriages or purveyance for the king. Purveyance taken away.

And that no perſon under colour of purveyance, ſhall take any timber, fuel, cattle, corn, grain, malt, hay, ſtraw, victual, cart, carriage or other thing, without conſent of the owner; nor ſhall require any to furniſh any horſes, oxen, or other cattle, carts, ploughs, wains, or other carriages, for the uſe of the king or his houſhold, without the owner's conſent:

On pain of being committed to gaol, by a juſtice of the peace, and the conſtable until the next ſeſſions, to be there indicted; and alſo of paying to the party treble damages, and treble coſts on an action at law.

Quakers.

SO far as quakers are concerned in the act of toleration, amongſt other proteſtant diſſenters, ſee title **Diſſenters.**

For quakers tithes, ſee title **Tithes.**

For quakers oaths, ſee title **Oaths.**

Quarentine. See **Plague.**

Rape.

I. What it is.

II. Evidence on an indictment of rape.

III. Puniſhment of rape.

IV. Principal and acceſſary.

I. What it is.

Rape, what.

1. RAPE is when a man hath carnal knowledge of a woman, by force, and againſt her will. 2 *Inſt.* 180. 1 *Haw.* 108.

Child under ten.

2. Alſo, if any perſon ſhall unlawfully and carnally know, and abuſe any woman child, under the age of ten years, whether with her conſent or againſt it; he ſhall be guilty of felony without benefit of clergy. 18 *El. c.* 7.

Conſenting at laſt.

3. The offence of rape is no way mitigated, by ſhewing that the woman at laſt yielded to the violence, if ſuch her conſent was forced by fear of death, or of dureſs. 1 *Haw.* 108.

Raviſhin a common ſtrumpet.

4. Alſo, it is not a ſufficient excuſe in the raviſher, to prove that the woman is a common ſtrumpet; for ſhe is ſtill under the protection of the law, and may not be forced. 1 *Haw.* 108.

Conſenting after the fact.

5. Nor is it any excuſe, that ſhe conſented after the fact. 1 *Haw.* 108.

And by the 6 *R.* 2. *c.* 6. when any woman is raviſhed, and afterwards doth conſent to the raviſher; they ſhall both of them be diſabled to have any inheritance, dower,

or

or joint feoffment, but the next of blood ſhall enter. And the next of kin to the woman raviſhed may have an appeal againſt the raviſher, notwithſtanding ſuch conſent; and the defendant ſhall not be received to wage battle.

Woman raviſhed conceiving.

6. It is ſaid by Mr. *Dalton*, that if a woman at the time of the ſuppoſed rape do conceive with child by the raviſher, this is no rape; for (he ſays) a woman cannot conceive except ſhe doth conſent. And this he hath from *Stamford* and *Britton*, and *Finch*. Dalt. *c.* 160.

But Mr. *Hawkins* obſerves, that this opinion ſeems very queſtionable; not only becauſe the previous violence is no way extenuated by ſuch a ſubſequent conſent; but alſo, becauſe if it were neceſſary to ſhew, that the woman did not conceive, the offender could not be tried till ſuch time as it might appear whether ſhe did or not; and likewiſe becauſe the philoſophy of this notion may be very well doubted of. 1 *Haw.* 108.

And L. *Hale* ſays, this opinion in *Dalton* ſeems to be no law. 1 *H. H.* 731.

II. Evidence on an indictment of rape.

The woman's oath.

1. The party raviſhed may give evidence on oath, and is in law a competent witneſs; but the credibility of her teſtimony, and how far forth ſhe is to be believed, muſt be left to the jury, and is more or leſs credible according to the circumſtances of fact that concur in that teſtimony. 1 *H. H.* 633.

Circumſtances in favour of it.

2. For inſtance, if the witneſs be of good fame; if ſhe preſently diſcovered the offence, and made purſuit after the offender; ſhewed circumſtances and ſigns of the injury, whereof many are of that nature, that only women are the moſt proper examiners and inſpectors; if the place, wherein the fact was done, was remote from people, inhabitants, or paſſengers; if the offender fled for it: theſe, and the like, are concurring evidences to give greater probability to her teſtimony, when proved by others as well as her ſelf. 1. *H. H.* 633.

Circumſtances in diſfavour of it.

3. But on the other ſide, if ſhe concealed the injury for any conſiderable time, after ſhe had opportunity to complain; if the place, where the fact was ſuppoſed to be committed, were near to inhabitants or common recourſe or paſſage of paſſengers, and ſhe made no outcry when the fact was ſuppoſed to be done, when and where it is probable ſhe charges him with the fact; or if ſhe is wrong in the deſcription

tion of the place, or ſwears the fact to be done in a place where it was impoſſible the man could have acceſs to her at that time, as if the room was locked up, and the key in the cuſtody of another perſon: theſe and the like circumſtances carry a ſtrong preſumption, that her teſtimony is falſe or feigned. 1 *H. H.* 633. *Read.* Rape.

Cautions

4. Upon the whole; rape, it is true, is a moſt deteſtable crime, and therefore ought ſeverely and impartially to be puniſhed with death; but it muſt be remembred, that it is an accuſation eaſily to be made, and hard to be proved, and harder to be defended by the party accuſed, tho' never ſo innocent: Therefore a wiſe jury will be cautious upon trials of offences of this nature, that they be not ſo much tranſported with indignation at the heinouſneſs of the offence, as to be over haſtily carried to the conviction of the perſon accuſed thereof, by the confident teſtimony, ſometimes of malicious and falſe witneſſes. 1 *H. H.* 635, 636.

III. Puniſhment of rape.

Felony without benefit of clergy.

1. Of old time rape was felony, for which the offender was to ſuffer death: afterwards the offence was made leſſer, and the puniſhment changed from death to the loſs of thoſe members whereby he offended; that is to ſay, it was changed to caſtration and loſs of his eyes, unleſs ſhe that was raviſhed, before judgment, demanded him for her huſband. 2 *Inſt.* 180.

Then, by the ſtatute of the 3 *Ed.* 1. *c.* 13. it was made a treſpaſs, ſubjecting the offender to two years impriſonment, and a fine, at the king's will; and it was again made felony, by the 13th *Ed.* 1. *c.* 34, and at laſt by the 18 *El. c.* 7. was excluded from the benefit of clergy.

Pardon.

2. And no charter of pardon ſhall be allowed for rape, unleſs the rape be ſpecified therein. 13 *R.* 2. *ſt.* 2. *c.* 1.

And all rapes are excepted out of the general pardon, of the 20 *G.* 2. *c.* 52.

IV. Principal and acceſſary.

Perſons preſent and aiding are principals.

1. Mr. *Hawkins* ſays, all who are preſent, and actually aſſiſt a man to commit a rape, may be indicted as principal offenders, whether they be men or women. 1 *Haw.* 108.

And, ſo one woman may be a principal to the raviſhment of another.

Not preſent acceſſaries.

2. And L. *Hale* ſays, that by the 18 *El. c.* 7. the principals in rape are ouſted of clergy, whether they be principals

pals in the firſt degree, to wit, he that committed the fact; or principals in the ſecond degree, to wit, preſent, aiding, and abetting; but acceſſaries, before and after, have their clergy. 1 *H. H.* 633.

Indictment for a rape.

Weſtmorland. THE *jurors for our lord the king upon their oath preſent, That* A. O. *late of —— in the county of ——, yeoman, not having God before his eyes, but being moved and ſeduced by the inſtigation of the devil, on the —— day of ——, in the —— year of the reign of ——, with force and arms, at ——, in the county aforeſaid, in and upon one* A. I. *ſpinſter, in the peace of God, and of our ſaid lord the king, then and there being, violently and felonioufly did make and aſſault, and her the ſaid* A. I. *againſt the will of her the ſaid* A. I. *then and there felonioufly did raviſh and carnally know; againſt the peace of our ſaid lord the king, and againſt the form of the ſtatute in ſuch caſe made and provided.*

Recognizance.

1. A Recognizance is a bond of record, teſtifying the recognizor to owe a certain ſum of money to ſome other; and the acknowledging of the ſame is to remain of record; and none can take it but only a judge or officer of record. *Dalt. c.* 168. What it is.

2. And theſe recognizances, in ſome caſes, the juſtices of the peace are enabled to take by the expreſs words of certain ſtatutes: but in other caſes (as for the peace, and good behaviour, and the like) it is rather in congruity, and by reaſonable intendment of law, than by any expreſs authority given them, either by their commiſſion, or by the ſtatute law. *Crom.* 125. *Dalt. c.* 168. In what caſes it may be taken.

But whereſoever any ſtatute giveth them power to take a bond of any man, or to bind over any man to appear at the aſſizes or ſeſſions, or to take ſureties for any matter or cauſe, they may take a recognizance. Yea, whereſoever they have authority given them to cauſe a man to do a thing, there it ſeemeth they have in congruity power given them to bind the party by recognizance to do it: and if the party ſhall refuſe

refuſe to be bound, the juſtice may ſend him to gaol. *Dalt. c.* 168.

But he can take no recognizance but only of ſuch matters as concern his office: and if he doth, it ſeemeth to be void. *Dalt. c.* 168.

The form of it.

3. Every obligation and recognizance, taken by juſtices of the peace, muſt be made to *our lord the king*; on pain of impriſonment of any perſon that ſhall take it otherwiſe. *Dalt. c.* 168.

It muſt alſo contain the name, place of abode, and trade or calling, both of principal and ſureties, and the ſums in which they are bound. *Barl.* Recog.

And it is moſt commonly ſubject to a *condition*, which is either indorſed or underwritten, or contained within the body of it; upon the performance of which the recognizance ſhall be void. *id.*

Manner of taking it.

4. When the parties are to enter into recognizance, call them by their names thus: "You *A. B.* acknowledge to "owe to our ſovereign lord the king, the ſum of ———, "and you *C. D.* acknowledge to owe to our ſovereign lord "the king, the ſum of ———; to be levied of your re- "ſpective goods and chattels, lands and tenements, for the "uſe of our ſaid lord the king, his heirs and ſucceſſors, if "default ſhall be made in the condition following; That "is to ſay, if you the ſaid *A. B.* ſhall make default in appear- "ing," *&c.* But the parties need not to ſign it. *id.*

And it is uſual for the juſtices to mark at the foot of the examination, *A. B.* in 40 *l.* to appear, *&c.* And from ſuch ſhort note to make out a record afterwards. *id.*

Yet the recognizance is a matter of record preſently, ſo ſoon as it is taken and acknowledged, altho' it be not made up. *Dalt. c.* 168.

Lord *Coke* (1 *Inſt.* 260.) ſays, that a record is a memorial or remembrance in rolls of *parchment*, &c. From whence it ſeemeth that a recognizance ought to be ingroſſed on parchment, perhaps for this reaſon, becauſe parchment is more durable than paper; but ſince there is no law which prohibits it to be engroſſed on paper, it ſeemeth that if it ſhall be on paper only, and not on parchment, it is good in law.

And when it is made up, if the juſtice ſhall only ſubſcribe his name, without his ſeal to it, this is well enough; and that may be in either of theſe ſorts, *Acknowledged before me*, J. P. or only to ſubſcribe his name thus, *J. P.* Dalt. c. 176.

5. The juſtices ſhall certify their recognizances for keeping the peace, to the next ſeſſions, that the party may be called; and if he make default, the default ſhall be recorded, and the recognizance, with the record of the default, ſhall be ſent and certified into the chancery, king's bench, or exchequer. 3 *H.* 7. *c.* 1. How to be certified.

But in caſes of felony, the recognizances are to be certified to the general gaol delivery. 1 & 2 *P.* & *M. c.* 13.

6. *H.* 7 *An. Q.* and Lord *Drummond.* Lord *Drummond* ſtood bound by recognizance to appear in the court of king's bench the firſt day of the term; and Sir *Simon Harcourt* excuſing his non-appearance by reaſon of ſickneſs, moved that his recognizance might be diſcharged, the attorney general having orders, and being in court conſenting thereto. But *Holt* chief juſtice ſaid, notwithſtanding ſuch conſent, my lord *Drummond* not appearing in perſon, the court could not diſcharge the recognizance, but ſaid, they could reſpite it till the next term: which was done accordingly. 11 *Mod.* 200. How diſcharged.

E. 12 *An. Q.* and *Ridpath. Ridpath* entered into a recognizance with ſureties to appear the firſt day of the term to anſwer (generally), and in the mean time to be of the good behaviour, and not to depart without leave of the court. An information was preferred againſt him by the attorney general; who, for ſome defect in the pleading, entered a *nolle proſequi*, and then exhibited a new information. The court was of opinion, that the recognizance extended to all crimes whatſoever that he ſhould be charged with; and that if it ſhould have relation to any particular crime only, it muſt be mentioned in the recognizance, which in this caſe is only *to anſwer* generally; that the inconvenience is not ſo great as is pretended, the bail in this caſe, being bound in a ſum certain, and not to ſtand in the place of the principal, as in civil caſes; and that the *nolle proſequi* is neither a bar nor diſcharge. 10 *Mod.* 152.

H. 1 *G. K.* and *Tomb.* If a recognizance is eſtreated in the exchequer, becauſe not punctually complied with, yet if the party appears and takes his trial next ſeſſion, he may compound for a very ſmall matter in the court of exchequer; becauſe the effect, though not the exact form of the recognizance, is complied with. The judges of oyer and terminer are the proper judges, whether recognizances ought to be eſtreated or ſpared; and it is for the advantage of publick juſtice, that they ſhould have ſuch power, if upon the circumſtances of the caſe they ſee fit. 10 *Mod.* 278.

And

And by parity of reaſon it ſhould ſeem, that the juſtices of the peace in the quarter ſeſſions ſhould have the like power in reſpect of offences cognizable there.

And in caſe they ſhall be eſtreated, where the offence is not attended with aggravating circumſtances, it is enacted, by the 4 *G.* 3. *c.* 10. as follows: Whereas many recognizances have been eſtreated into the exchequer, againſt perſons for not appearing as parties or witneſſes in the courts of record at Weſtminſter, or at the aſſizes, and general quarter ſeſſions, or other courts of record, for not proſecuting indictments there, or otherwiſe not performing the conditions of ſuch recognizances; many of which neglects of duty have happened by the inattention of ignorant people, ſome of whom are impriſoned, and others liable to be ſo, by the proceſs conſtantly iſſued againſt them out of the courr of exchequer, tho' no other proſecution be ſubſiſting, but merely for ſuch forfeitures of their recognizances, for which there are no eaſy means at preſent for poor perſons eſpecially, to procure any diſcharge; for remedy thereof, it ſhall be lawful for the barons of the exchequer, on affidavit and petition by and on the behalf of the perſon impriſoned, or liable to be impriſoned, on the forfeiture of ſuch recognizance, to diſcharge ſuch perſon, by order, without any *quietus* to be ſued out for that purpoſe; for which order, no more ſhall be taken than one pound and one ſhilling. Provided, that no diſcharge ſhall be given on ſuch petition, where any debt is due to the crown, other than by the recognizance ſo prayed to be diſcharged; nor in any caſes of defrauding the revenue by contraband trade, or aſſaulting the officers of the cuſtoms or exciſe in the execution of their duty, or any perſon lawfully aſſiſting them therein.

The *conditions* of recognizances, in all the variety of caſes, are interſperſed under their proper titles.

Recognizance with ſureties.

Weſtmorland. BE *it remembred, that on the* —— *day of* ——, *in the* —— *year of the reign of our lord* George *the third, of* Great-Britain, France, *and* Ireland, *king, defender of the faith, and ſo forth,* A. O. *of* ——, *in the county aforeſaid, yeoman, and* A. S. *of* ——, *in the county aforeſaid, taylor, and* B. S. *of* ——, *in the county aforeſaid, labourer, perſonally came before me,* J P. *eſquire,*

quire, one of the juſtices of our ſaid lord the king, aſſigned to keep the peace in the ſaid county, and acknowledged themſelves to owe to our ſaid lord the king; that is to ſay, the ſaid A. O. *the ſum of* 20 l. *and the ſaid* A. S. *and* B. S. *each the ſum of* 10 l. *ſeparately, of good and lawful money of* Great Britain, *to be made and levied of their goods and chattels, lands and tenements reſpectively to the uſe of our ſaid lord the king, his heirs and ſucceſſors, if the ſaid* A. O. *ſhall make default in the condition hereon indorſed,* [or, *here-under written*].

Acknowledged before me,

J. P.

Recognizance without ſureties.

Weſtmorland. BE *it remembred, that on the —— day of ——, in the —— year of the reign of our lord* George *the third, of* Great Britain, France, *and* Ireland, *king, defender of the faith, and ſo forth,* A. O. *of ——, in the ſaid county, yeoman, perſonally came before me,* J. P. *eſquire, one of the juſtices of our ſaid lord the king, aſſigned to keep the peace in the ſaid county, and acknowledged himſelf to owe to our ſaid lord the king,* 10 l. *of good and lawful money of* Great Britain, *to be made and levied of his goods and chattels, lands and tenements, to the uſe of our ſaid lord the king, his heirs and ſucceſſors, if he the ſaid* A. O. *ſhall fail in the condition under written* [or *indorſed*].

J. P.

The condition of the above written [or, *within written*] *recognizance is ſuch, that if the above bound* A. O. *ſhall ——. Then the ſaid recognizance to be void, or elſe remain in its force.*

Recuſant. See **Popery**, and **Publick Worſhip.**

Regrator. See **Foreſtaller.**

Rent. See **Diſtreſs.**

Reſcue.

What is a reſcous.

1. RESCOUS is an ancient *French* word, coming from *reſcourer*, that is *recuperare*, to recover; and ſignifies a forcible ſetting at liberty againſt law, a perſon arreſted by the proceſs or courſe of law. 1 *Inſt.* 160.

It ſeems that it is neceſſary, that the reſcuer ſhould have knowledge that the perſon is under arreſt for a criminal offence, if he be in the cuſtody of a private perſon; but if he be in the cuſtody of an officer, there at his peril he is to take notice of it. 2 *H. H.* 606.

But it is ſaid, that to reſcue a felon taken on a general warrant, to anſwer what ſhall be objected againſt him, no cauſe being expreſſed in the warrant, is not felony. 1 *H. H.* 578.

Nor unleſs a felony hath been really done. *Hales's Pl.* 116.

When it ſhall be tried.

2. Altho' a *priſon breaker* may be arraigned for that offence, before he be arraigned of the crime for which he was impriſoned; yet he who *reſcues* one impriſoned for felony, cannot, according to the better opinion, be arraigned, for ſuch offence, as for a felony, till the principal offender be attainted; but he may be immediately proceeded againſt for a miſpriſion, if the king pleaſes. 2 *Haw.* 140.

And therefore, if the principal die before the attainder, he ſhall be fined and impriſoned. *Hale's Pl.* 116.

Alſo, if the principal be found not guilty, or guilty of a crime not capital, the reſcuer ought to be diſcharged of felony, but he may be fined for the miſdemeanor. 1 *H. H.* 598, 599.

Indictment.

3. An indictment of *reſcous*, muſt ſet forth the nature and cauſe of the impriſonment, and the ſpecial circumſtances of the fact in queſtion. 2 *Haw.* 240.

Puniſhment.

4. A hindrance of a perſon to be arreſted, that has committed felony, is a miſdemeanour, but no felony: but if the party be arreſted, and then reſcued, if the arreſt was for felony, the reſcuer is a felon; if for treaſon, a traytor; if for treſpaſs, fineable. *Hale's Pl.* 116. 2 *Haw.* 140.

There are alſo ſpecial penalties enacted for reſcuing offenders againſt particular ſtatutes, which belong not to this general title.

Clergy.

5. Altho' the felony for which a man is arreſted, be not within clergy; yet the reſcuing him is within clergy. 1 *H. H.* 599, 607.

6. Upon

6. Upon the return of a *reſcous*, proceſs of outlawry ſhall iſſue. 2 *Haw.* 302. Outlawry.

Indictment for a reſcue.

THE *jurors for our lord the king upon their oath preſent, that on the —— day of ——, in the —— year of the reign of ——*, J. P. *eſquire, one of the juſtices of our ſaid lord the king, aſſigned to keep the peace in the ſaid county, and alſo to hear and determine divers felonies, treſpaſſes, and other miſdemeanours in the ſaid county committed, did make, direct, and deliver a warrant or precept in writing, to* A. C. *of ——, in the ſaid county, yeoman, conſtable of the town of —— aforeſaid in the county aforeſaid; by which ſaid warrant he the ſaid* A. C. *the conſtable aforeſaid, was commanded to take the body of* A. O. *late of ——, yeoman, and bring and have him the ſaid* A. O. *before the ſaid* J. P. *to be examined by him the ſaid* J. P. *concerning an aſſault ſaid to have been committed by him the ſaid* A. O. *upon* A. I. *of ——, yeoman: Which ſaid* A. C. *the conſtable aforeſaid, afterwards, that is to ſay, on the —— day of ——, in the year aforeſaid, at —— aforeſaid, in the county aforeſaid, by virtue of the ſaid warrant, did take and arreſt him the ſaid* A. O. *for the cauſe aforeſaid, and him the ſaid* A. O. *in his cuſtody, by virtue of the ſaid warrant, then and there had: And that the ſaid* A. O. *late of —— aforeſaid, in the county aforeſaid, yeoman, and* B. O. *late of the ſame, yeoman, well knowing the ſaid* A. O. *ſo to be arreſted, as aforeſaid, afterwards, to wit, on the ſaid —— day of ——, in the year aforeſaid, at —— aforeſaid, in the county aforeſaid, with force and arms, in and upon the ſaid* A. C. *the conſtable aforeſaid, then and there being in the peace of God and of our ſaid lord the king, and in the execution of his ſaid office, then and there being, did make an aſſault, and him the ſaid* A. C. *then and there did beat, wound, and ill treat, and that the ſaid* B. O. *him the ſaid* A. O. *out of the cuſtody of the ſaid* A. C. *and againſt the will of the ſaid* A. C. *then and there, with force and arms unlawfully did reſcue and put at large to go where he would; and that the ſaid* A. O. *himſelf, out of the cuſtody of the ſaid* A. C. *and againſt the will of the ſaid* A. C. *then and there, with force and arms, unlawfully did reſcue, and eſcape at large, where he would go; in contempt of our ſaid lord the king and his laws, to the great damage of the ſaid* A. C. *to the evil example of all others in the like caſe offending, and againſt the peace of our ſaid lord the king, his crown and dignity.*

Reſtitution of ſtolen goods.

THERE are three means of reſtitution of goods, for the party from whom they were ſtolen; 1. By appeal of robbery or larceny. 2. By the ſtatute of the 21 *H.* 8. *c.* 11. And, 3. By the courſe of the common law. 1 *H. H.* 538.

Reſtitution upon an appeal.

1. *Upon an appeal or robbery or larcency.* If the party were convict thereupon, reſtitution of the goods contained in the appeal, was to be made to the appellant; for it is one of the ends of that ſuit. 1 *H. H.* 538.

And hence it is, that if in an appeal of felony or robbery, the appellant omit any of the goods ſtolen from him, they are forfeit and confiſcate to the king. 1 *H. H.* 538.

And this appeal muſt be upon freſh ſuit; and tho' antiently the law was ſtrict herein, as to the time and manner of the purſuit and apprehending of the felon, yet the law is now more liberal. 1 *H. H.* 540.

For if the felon be taken by any others, as by the ſheriff, yet if the party robbed come within a year after, and give notice of the felony, and enter his appeal, this is a freſh ſuit, if he uſed his diligence ſhortly after the felony to have taken him. 1 *H. H.* 540.

If a felon waive the goods ſtolen, without any purſuit after him, thoſe goods are not in law waived, nor forfeit to the king or lord of a franchiſe; but if he waive them upon a purſuit of him, then they are waived in law, and forfeit to the king or lord of the liberty. 1 *H. H.* 541.

And this forfeiture is not like a ſtray, where though the lord may ſeize, yet the party who is the owner may retake them within the year and day; but here the true owner cannot ſeiſe his own goods, though upon freſh ſuit within the year and day. 1 *H. H.* 541.

But yet this is not an abſolute loſs of the owner's goods, but rather an expedient, ſettled by law, to drive the owner to convict the felon by proſecuting his appeal; and therefore if he make freſh ſuit, and proſecute his appeal; and the felon be thereupon convict or attaint, and the freſh ſuit be inquired and found, by verdict or inqueſt of office, he ſhall have reſtitution of the goods ſo waived. 1 *H. H.* 541.

Reſtitution by the ſtatute of 21 H. 8.

2. *By the ſtatute of the* 21 *H.* 8. *c.* 11. Which ſtatute introduced a new law for reſtitution; for before this ſtatute there was no reſtitution upon an indictment, but only upon an appeal: Which ſaid ſtatute enacteth as follows:

If

If any felon do rob or take away any man's money or goods, and thereof be indicted and arraigned, and found guilty, or otherwiſe attainted, by reaſon of evidence given by the party robbed, or owner of the money or goods, or by any other by their procurement; then the party robbed or owner of the goods, ſhall be reſtored to ſuch his money or goods: and as well the juſtices of gaol delivery, as other juſtices before whom the felon ſhall be found guilty, or otherwiſe attainted, may award a writ of reſtitution, in like manner as if the felon were attainted on appeal.

Found guilty or otherwiſe attainted] By this it ſeems queſtionable, whether the party be entitled to reſtitution, upon the defendant's ſtanding mute; in which caſe, he is neither found guilty, nor otherwiſe attainted. 2 *Haw.* 332.

Or otherwiſe attainted] If the owner prefers a bill of indictment, which is found, and the felon flies, and is outlawed, the owner ſhall have reſtitution; for he gave evidence upon the indictment, which though it be not a conviction, is the ground of the outlawry, which is an attainder. 1 *H. H.* 545.

The party robbed or owner] Therefore if the ſervant be robbed of the maſter's money, or his ſervant by his procurement, give evidence, and convict the felon, the maſter ſhall have a writ of reſtitution, if it appear upon the indictment and evidence, that it was the maſter's money; for the ſtatute gives reſtitution to the party robbed, or owner. 1 *H. H.* 542.

Or owner] If the teſtator is robbed, and the thief is convict upon the procurement of the executor: ſuch executor ſhall have reſtitution; for this being a beneficial law, ought to be conſtrued beneficially, ſo as to extend to executors and adminiſtrators. 3 *Inſt.* 242.

Shall be reſtored] If goods be ſtolen, and not waived in flight, nor ſeized by the king's officers, or lord of the manor, nor ſold in open market, the owner may take them again, without any writ of reſtitution, or may bring his action for them; and this, although he doth not proſecute the offender. 2 *Haw.* 168. *Kely.* 48.

And by the 31 *El. c.* 12. Where *horſes* are ſtolen, and ſold in open market, and the owner claims them again

within ſix months, and pays the buyer as much as they coſt him, he ſhall have them again, without proſecution.

But otherwiſe, if the goods be waived by the felon in his flight, or in caſe they be not waived, yet if they be ſeized by the king's officers, or lord of the manor, as ſuſpecting them to be ſtolen; there the party ſhall not have reſtitution, unleſs the felon be convicted at his proſecution. 2 *Haw.* 168. *Kely.* 48.

And in ſuch caſe, he ſhall have no more than what is mentioned in the indictment, though other goods were ſtolen at the ſame time; and the reaſon is, becauſe by ſuch omiſſion, the offender might have eſcaped. *Kely.* 49. 1 *H. H.* 545.

To ſuch his money or goods] A man ſtole cattle, and ſold them in open market; the ſheriff ſeized the thief and the money, and he was convicted and hanged at the proſecution of the owner of the cattle, and he had reſtitution of the money; for though the ſtatute gives power to the juſtices to award reſtitution of the *money or goods ſtolen*, and though the money in this caſe was not ſtolen, yet becauſe it did ariſe by ſtealing, it ſhall be within the equity, though not in the very words of the ſtatute. *Noy* 128.

But it hath been a great queſtion, if goods be ſtolen, and by the thief ſold in the market overt, whether the thief being convicted upon the evidence of the party robbed, he ſhall have reſtitution upon this ſtatute of the thing ſold or not, the buyer not being privy to the felony: But lord *Hale* argues ſtrongly, that he ſhall have reſtitution, notwithſtanding the ſale in market overt of the goods ſtolen. 1. Becauſe this act was made to encourage perſons robbed, to purſue malefactors, and therefore they have an aſſurance of reſtitution: and it would be ſmall encouragement if a thief by ſale in a market overt, which is every day almoſt in every ſhop in *London*, ſhould elude it. 2. Becauſe the man that is robbed, is robbed againſt his will, and cannot help it; but the buyer of ſtolen goods may chuſe whether he will buy, or if he buy, may yet refuſe to buy, unleſs well ſecured of the property of the goods, or knowing the owner. 1 *H. H.* 542, 3, 4. 2 *Haw.* 170. *Kely.* 48.

In like manner as if the felon were attainted on appeal] And yet upon this ſtatute, if the offender be convict upon the evidence of the party robbed, or owner, he ſhall have reſtitution, though there were no freſh ſuit, or any inquiry by inqueſt touching the ſame; and this is conſtant prac-

tice, though in caſe of an appeal it be otherwiſe. 1 *H. H.* 545.

Yet if it ſhall appear to the court, that the party hath been guilty of groſs neglect in proſecuting; it ſeemeth that in ſuch caſe he ſhall not be intitled to reſtitution. 2 *Haw.* 171.

3. *By courſe of the common law.* If the owner takes his goods again of the offender, to the intent to favour him, or maintain him, this is unlawful, and puniſhable by fine and impriſonment; but if he take them again without any ſuch intent, it is no offence. 1 *H. H.* 546. Reſtitution by the common law.

But after the felon is convicted, it can be no colour of crime to take his goods again, where he finds them; becauſe he hath purſued the law upon him, and may have his writ of reſtitution, if he pleaſe. 1 *H. H.* 546.

Riot, rout, and unlawful aſſembly.

I. What is a riot, rout, or unlawful aſſembly.
II. How the ſame may be reſtrained by a private perſon.
III. How by a conſtable, or other peace officer.
IV. How by one juſtice.
V. How by two juſtices.
VI. How by proceſs out of chancery.

I. What is a riot, rout, or unlawful aſſembly.

WHEN *three perſons or more ſhall aſſemble themſelves together, with an intent mutually to aſſiſt one another, againſt any who ſhall oppoſe them, in the execution of ſome enterprize of a private nature, with force or violence, againſt the peace, or to the manifeſt terror of the people, whether the act intended were of itſelf lawful or unlawful*; If they only meet to ſuch a purpoſe or intent, although they ſhall after depart of their own accord, without doing any thing, this is an *unlawful aſſembly*.

If after their firſt meeting they ſhall move forward towards the execution of any ſuch act, whether they put their intended purpoſe in execution or not; this, according to the general opinion, is a *rout*:

And if they execute ſuch a thing in deed, then it is a *riot*. (A) 1 *Haw.* 155. *Dalt. c.* 136.

Three perſons or more] And therefore if the jury do acquit all but two, and find them guilty, the verdict is void, unleſs they be indicted *together with other rioters unknown*, becauſe it finds them guilty of an offence, whereof it is impoſſible that they ſhould be guilty; for there can be no riot, where there are no more perſons than two. 2 *Haw.* 441.

And infants under the age of diſcretion are not perſons within this deſcription, puniſhable as rioters. 1 *Haw.* 159.

Note; In 1 *Haw.* 156, 157, 158, the words *more than three perſons* are three times over inſerted inſtead of *three perſons or more*; which is only remarked as an inſtance, that in a variety of matter, it is impoſſible for the mind of man to be always equally attentive.

Aſſemble themſelves together] It ſeems agreed, that if a number of perſons being met together at a fair, or market, or church ale, or any other lawful and innocent occaſion, happen on a ſudden quarrel to fall together by the ears, they are not guilty of a riot, but of a ſudden affray only, of which none are guilty but thoſe who actually engage in it; becauſe the deſign of their meeting was innocent and lawful, and the ſubſequent breach of the peace happened unexpectedly, without any previous intention concerning it: Yet it is ſaid, that if perſons innocently aſſembled together, do afterwards upon a diſpute happening to ariſe among them, form themſelves into parties, with promiſes of mutual aſſiſtance, and then make an affray, they are guilty of a riot; becauſe upon their confederating together with an intention to break the peace, they may as properly be ſaid to be aſſembled together for that purpoſe from the time of ſuch confederacy, as if their firſt coming together had been on ſuch a deſign. 1 *Haw.* 156.

In the execution of ſome enterpriſe of a private nature] It ſeems agreed, that the injury or grievance complained of, and intended to be revenged or remedied by ſuch an aſſembly, muſt relate to ſome private quarrel only; as the incloſing of lands, in which the inhabitants of a town claim a right of common, or gaining the poſſeſſion of tenements the title whereof is in diſpute, or ſuch like matters relating to the intereſt or diſputes of particular perſons, and no way

concerning the publick; for wherever the intention of ſuch an aſſembly is to redreſs publick grievances, as to pull down all incloſures in general, or reform religion, and the like, it is high treaſon. 1 *Haw.* 157.

Againſt the peace, or to the terror of the people] It ſeems to be clearly agreed, that in every riot there muſt be ſome ſuch circumſtances, either of actual force or violence, or at leaſt of an apparent tendency thereto, as are naturally apt to ſtrike a terror into the people; as the ſhew of armour, threatning ſpeeches, or turbulent geſtures; for every ſuch offence muſt be laid to be done *to the terror of the people*: And from hence it clearly follows, that aſſemblies at wakes, or other feſtival times, or meetings for exerciſe of common ſports or diverſions, as bull baiting, wreſtling, and ſuch like, are not riotous. 1 *Haw.* 157.

And from the ſame ground alſo it ſeems to follow, that it is poſſible for three perſons or more to aſſemble together with an intention to execute a wrongful act, and alſo actually to perform their intended enterprize, without being rioters; as if a man aſſemble a meet company, to carry away a piece of timber or other thing, whereto he pretends a right, that cannot be carried without a great number, if the number be not more than are needful for ſuch purpoſe, although another man hath better right to the thing ſo carried away, and that this act be wrong and unlawful; yet it is of itſelf no riot, except there be withal threatening words uſed, or other diſturbance of the peace. *Dalt. c.* 137. 1 *Haw.* 157.

Much more may any perſon, in a peaceable manner, aſſemble a meet company to do any lawful thing, or to remove or caſt down any common nuſance: Thus every private man, to whoſe houſe or land any nuſance ſhall be erected, made, or done, may in peaceable manner aſſemble a meet company, with neceſſary tools, and may remove, pull, or caſt down ſuch nuſance, and that, before any prejudice received thereby; and for that purpoſe, if need be, may alſo enter into the other man's ground. Thus a man erected a wear croſs a common river, where people have a common paſſage with their boats, and divers did aſſemble, with ſpades, crows of iron, and other things neceſſary to remove the ſaid wear, and make a trench in his land, that did erect the wear, to turn the water, ſo as they might the better take up the ſaid wear, and they did remove the ſame nuſance; this was holden neither any forcible entry, nor yet any riot. *Dalt. c.* 137.

But in the caſes aforeſaid, if in removing any ſuch nuſance, the perſons ſo aſſembled ſhall uſe any threatning words (as to ſay, they will do it though they die for it, or ſuch like words) or ſhall uſe any other behaviour, in apparent diſturbance of the peace, then it ſeemeth to be a riot; and therefore where there is cauſe to remove any ſuch nuſance, or to do any like act, it is the ſafeſt not to aſſemble any multitude of people, but only to ſend one or two perſons, or of a greater number, yet no more than are needful, and only with meet tools, to remove, pull, or caſt down the ſame, and that ſuch perſons tend their buſineſs only, without diſturbance of the peace, or threatning ſpeeches. *Dalt. c.* 137.

Whether the act intended were of itſelf lawful or unlawful] It hath been generally holden, that it is no way material, whether the act intended to be done by ſuch an aſſembly, be of itſelf lawful or unlawful; from whence it follows, that if three or more perſons aſſiſt a man to make a forcible entry into lands, to which one of them has a good right of entry, or if the like number in a violent and tumultuous manner join together in removing a nuſance, or other thing which may lawfully be done in a peaceable manner, they are as properly rioters, as if the act intended to be done by them were never ſo unlawful. 1 *Haw.* 158.

II. How the ſame may be reſtrained by a private perſon.

By the common law, any private perſon may lawfully endeavour to ſuppreſs a riot, by ſtaying thoſe whom he ſhall ſee engaged therein, from executing their purpoſe, and alſo by ſtopping others whom he ſhall ſee coming to join them. 1 *Haw.* 159.

III. How by a conſtable or other peace officer.

By the common law, the ſheriff, conſtable, and other peace officers, may and ought to do all that in them lies, towards the ſuppreſſing of a riot, and may command all other perſons to aſſiſt therein. 1 *Haw.* 159.

IV. How by one juſtice.

By the 34. Ed. 3 c. 1. *The juſtices of the peace ſhall have power to reſtrain rioters, and to arreſt and chaſtiſe them according to their offence; and cauſe them to be impriſoned and duly*

duly puniſhed, according to the law and cuſtom of the realm, and according to that which to them ſhall ſeem beſt to do, by their diſcretions and good adviſement.

And this ſtatute hath been liberally conſtrued for the advancement of juſtice; for it hath been reſolved, that if a juſtice finds perſons riotouſly aſſembled, he alone, without ſtaying for his companions, hath not only power to arreſt the offenders, and bind them to their good behaviour, or impriſon them if they do not offer good bail; but that he may alſo authorize others to arreſt them, by a bare verbal command, without other warrant; and that by force thereof, the perſons ſo commanded may purſue and arreſt the offenders in his abſence, as well as preſence. Alſo it is ſaid, that after a riot is over, any one juſtice may ſend his warrant, to arreſt any perſon who was concerned in it, and alſo that he may ſend him to gaol, till he ſhall find ſureties for his good behaviour. 1 *Haw.* 160.

But it ſeems to be agreed, that no one juſtice hath any power by force of this ſtatute, either to record a riot upon his own view, or to take an inquiſition thereof after it is over: Alſo if one juſtice, proceeding upon this ſtatute, ſhall arreſt an innocent perſon as a rioter, it ſeemeth that he is liable to an action of treſpaſs, and that the party arreſted may juſtify the reſcuing himſelf, becauſe no ſingle juſtice is by this ſtatute made a judge of the ſaid offence. But if a riot ſhall be committed by perſons armed in an unuſual manner, contrary to the ſtatute of *Northampton*, 2 *Ed.* 3. *c.* 3. and any one juſtice acting *ex officio*, in purſuance of the ſtatute, ſeize the armour, and impriſon the offender, and make a record of the whole matter, ſuch a record cannot be traverſed, becauſe it is made by one acting in a judicial capacity. And for the ſame reaſon, if a juſtice proceeding on the ſtatute of the 15 *R.* 2. againſt forcible entries and detainers, ſhall upon his own view record a riot, which ſhall be committed in the making of any ſuch forcible entry or detainer, a riot ſo recorded cannot be traverſed. Alſo if a juſtice acting as a judge by any ſtatute whatſoever impowering him ſo to do, make a record upon his view of a riot committed in his preſence, ſuch record ſhall not be traverſed; for the law gives ſuch uncontroulable credit to all matters of record, made by any judge of record as ſuch, that it will never admit of an averment againſt the truth thereof. 1 *Haw.* 160.

But if the rioters are above the number of twelve, the offence is greatly inhanced, and the power of one juſtice very muſt inlarged, by the act commonly called the riot act,

act, 1 *G. ſt.* 2. *c.* 5. which is required to be read at every quarter ſeſſions and leet: By which it is enacted, That every juſtice, ſheriff, under ſheriff, and mayor, ſhall on notice or knowledge of any unlawful, riotous, and tumultuous aſſembly of perſons to the number of twelve or more, together with ſuch help as he ſhall command, reſort to the place. *ſ.* 2, 3.

Whereupon he ſhall, amongſt the rioters, or as near to them as he can ſafely come, with a loud voice command, or cauſe to be commanded, ſilence to be, while proclamation is making; and after that, ſhall openly and with a loud voice make or cauſe to be made proclamation in theſe words, or like in effect:

Our ſovereign lord the king chargeth and commandeth all perſons being aſſembled, immediately to diſperſe themſelves, and peaceably to depart to their habitations, or to their lawful buſineſs, upon the pains contained in the act made in the firſt year of king George *for preventing tumults and riotous aſſemblies: God ſave the king.* ſ. 2.

And if any perſon ſhall with force and arms wilfully oppoſe, hinder, or hurt any perſon that ſhall begin or go to make the proclamation, whereby the ſame ſhall not be made, he ſhall be guilty of felony without benefit of clergy. *ſ.* 5.

And if any twelve or more of them ſhall continue together by the ſpace of one hour after ſuch proclamation made, or after ſuch hindrance (having knowledge thereof), they ſhall be guilty of felony without benefit of clergy. *ſ.* 1, 5.

And every juſtice, ſheriff, under-ſheriff, mayor, high and petty conſtable, and other peace-officer, and every other perſon of age and ability commanded by them to aſſiſt, ſhall apprehend the offenders, and carry them before a juſtice, to be proceeded againſt according to law. And if any rioters be killed or hurt by any of the ſaid perſons in diſperſing or apprehending them, by reaſon of their reſiſtance, ſuch perſons ſhall be indemnified. *ſ.* 3.

Alſo, if any rioters (although under the number of twelve, and whether any proclamation be made or not) ſhall unlawfully and with force demoliſh or pull down any church or chapel, or any building for religious worſhip certified and regiſtred according to the act of toleration, or any dwelling houſe, barn, ſtable, or other out houſe, they ſhall be guilty of felony without benefit of clergy. *ſ.* 4. And any one juſtice may proceed againſt them, as againſt other felons.

And

And the hundred, city, or town, ſhall anſwer the damages thereof, as in caſes of robbery. *ſ.* 6.

Proſecutions on this act, to be within twelve months after the offence. *ſ.* 8.

V. How by two juſtices.

1: *If any riot, aſſembly, or rout of people, againſt the law, be made; the juſtices, three, or two of them at the leaſt, and the ſheriff, or under ſheriff, ſhall come with the power of the county, if need be.* 13 H. 4. c. 7. ſ. 1.

And *the king's liege people being ſufficient to travel, ſhall be aſſiſtant to them, upon reaſonable warning, to ride with them in aid to reſiſt ſuch riots, routs, and aſſemblies; on pain of impriſonment, and to make fine and ranſom to the king.* 2 H. 5. c. 8. ſ. 2.

If any riot, aſſembly, or rout of people, againſt the law, be made] It is ſaid, that the juſtices are not only impowered hereby to raiſe the power of the county to aſſiſt them, in ſuppreſſing a riot which ſhall happen within their own view, or hearing, but alſo that they may ſafely do it upon a credible information given them of a notorious riot happening at a diſtance, whether there were any ſuch riot in truth or not; for it may be dangerous for them to ſtay till they can get certain information of the fact: But they ſeem to be puniſhable for alarming the county in this manner, without ſome ſuch probable ground for their proceeding, as would induce a reaſonable man to think it neceſſary and convenient. 1 *Haw.* 161.

Aſſembly] It ſeems clear from hence, that if the juſtices in going towards the place where they have heard that there is a riot, ſhall meet perſons coming from thence riotouſly arrayed, they may arreſt them for being aſſembled together in ſuch an unlawful manner, and alſo make a record thereof; for the ſtatute extends to all other unlawful aſſemblies whatſoever as well as to riots. 1 *Haw.* 161.

The king's liege people] Except women, clergymen, perſons decrepit, and infants under the age of fifteen. 1 *Haw.* 161.

To reſiſt ſuch riots] And alſo to arreſt the rioters, and conduct them to priſon. 1 *Haw.* 161.

2. *And*

2. *And ſhall arreſt them.* 13 H. 4. c. 7. ſ. 1.

And if they ſhall eſcape, they may take them on a freſh purſuit; but they cannot at another time award any proceſs againſt them on the record, but ought to ſend the record into the king's bench, that proceſs may iſſue thereon from thence: Yet there ſeems to be no doubt, but that they may arreſt them for their treſpaſs on the aforeſaid ſtatute of the 34 *Ed.* 3. in order to compel them to find ſureties for their good behaviour. 1 *Haw.* 162.

3. *And the ſame juſtices and ſheriff, or under ſheriff, ſhall have powar to record* (B) *that which they ſhall find ſo done in their preſence againſt the law: by which record the offenders ſhall be convict in the ſame manner and form as is contained in the ſtatute of forcible entries.* (C) 13 *H.* 4. *c.* 7. *ſ.* 1.

Shall have power to record] And this they may do, whether the offenders be in cuſtody at the ſame time, or have eſcaped. 1 *Haw.* 161.

Shall be convict] And it ſeemeth to be certain, that the record of a riot, expreſly mentioned to have happened within the view of the juſtices by whom it is recorded, is a conviction of ſo great authority, that it can no way be traverſed, however little ground of truth there might be to affirm, that any riot at all was committed, or however innocent the parties may be of the fact recorded againſt them. 1 *Haw.* 162.

However it ſeemeth clear, that if in ſuch a record of a riot it be contained, that the party was guilty therein of a felony, or maim, or reſcous, the party ſhall be concluded thereby as to the riot only, and not as to any of the other matters; becauſe the juſtices have by this ſtatute a judicial authority over no other offences, except riots, routs, and unlawful aſſemblies. 1 *Haw.* 162.

And inaſmuch as ſuch a record is a final conviction of the parties, as to all ſuch matters as are properly contained in it, it ought to be certain both as to the time and place of the offence, and the number of perſons concerned therein, and the ſeveral kinds of weapons made uſe of by them, and all other circumſtances of the fact; for ſince the parties are excluded from denying the truth of ſuch a record, and have no other remedy to defend themſelves againſt it, but only by advantage of the inſufficiency of what is contained in it, they may juſtly demand the benefit of excepting to it, if it do not expreſly ſhew, both that they are guilty within the

the meaning of the ſtatute, and alſo how far they are guilty, and that the juſtices have purſued the power given them by the ſaid ſtatutes: and from the ſame ground it ſeems alſo to follow, that ſuch a record may be excepted againſt, if it do not appear to have been made by the ſheriff or under ſheriff in concurrence with the juſtices. 1 *Haw.* 162.

And this record ought to remain with one of the juſtices, and ſhall not be left amongſt the records of the ſeſſions, it being made out of ſeſſions, and not appointed to be certified thither. *Dalt. c.* 82.

In the ſame manner and form as is contained in the ſtatute of forcible entries] That is, the ſtatute of the 15 *R.* 2. *c.* 2. And hereupon it is ſaid, that the offenders being under the arreſt of the juſtices, and alſo convicted by a record of their offence, ought immediately to be committed to gaol by the ſame juſtices, till they ſhall make fine and ranſom to the king; which can be aſſeſſed by no other juſtices of the peace, except thoſe by whom the record of the offence was made. 1 *Haw.* 162.

And this fine, Mr. *Dalton* ſays, the juſtices ſhall cauſe to be eſtreated into the exchequer, that ſo it may be levied to the king's uſe; and then they are to deliver the offenders again. *Dalt. c.* 82.

But Mr. *Hawkins* ſays, that it hath been queſtioned whether the juſtices can ſafely diſmiſs the offenders upon their paying ſuch a fine as ſhall be impoſed upon them, without ſome judgment for their impriſonment as well as fine; becauſe it is enacted by the 2 *H.* 5. *c.* 8. that ſuch rioters attainted of great and heinous riots, ſhall have one whole year's impriſonment at the leaſt, without being let out of priſon by bail or mainprize; and that the rioters attainted of petty riots, ſhall have impriſonment as beſt ſhall ſeem to the king or to his council. 1 *Haw.* 164.

4. And *if the offenders be departed before the coming of the ſaid juſtices and ſheriff or under ſheriff, the ſame juſtices, three or two of them, ſhall diligently enquire* (D) *within a month after ſuch riot, aſſembly, or rout of people ſo made, and thereof ſhall hear and determine according to the law of the land.* 13 H. 4. c. 7. ſ. 1.

The ſame juſtices] It is generally ſaid, that any juſtices of the county may take ſuch an inquiry, whether they dwell near the place where the riot happened, or at a diſtance, or whether they went to view the riot or not; for the ſtatute ought to be conſtrued as largely as the words will bear, in favour

favour of the juſtices power in the ſuppreſſing of ſuch riots; and therefore thoſe words in the ſtatute that *the ſame juſtices ſhall inquire*, ought to be thus expounded, that the ſame juſtices who were before impowered to raiſe the poſſe, ſhall inquire, and that is, any juſtices in the county. 1 *Haw.* 163.

Shall diligently inquire] That is, by a jury: In order to which, it is enacted by the 19 *H.* 7. *c.* 13. that the ſheriff, on their precept directed to him, ſhall, on pain of 20 l. return 24 perſons, whereof every of them ſhall have lands and tenements within the ſhire, to the yearly value of 20 s. of charter land or freehold, or 26 s. 8 d. of copyhold, or of both, over and above all charges: And he ſhall return upon every juror in iſſues, at the firſt day 20 s. and at the ſecond 40 s.

Note; *Charter land* had its name from a particular form in the charter or deed, which ever ſince the reign of *H.* 8. hath been diſuſed. 1 *Inſt.* 6.

Within a month] That is, if they do not make inquiry within a month, they are puniſhable for the neglect; yet they may inquire after the month: for the lapſe of a month doth not determine their authority, but only ſubjects them to a penalty. 2 *Salk.* 593.

Shall hear and determine according to the law of the land] And therefore they may award proceſs under their own teſte, againſt thoſe who ſhall be indicted before them of any of the offences abovementioned, according to the form of this ſtatute; and alſo may award the like proceſs for the trial of a traverſe of ſuch an inquiſition; and do all other things in relation thereunto, which are of couſe incident to all courts of record. 1 *Haw.* 163.

And the riot being ſo found by inquiſition, the juſtices muſt make a record thereof in writing of ſuch their inquiry or preſentment found before them; which record alſo is to remain with one of the juſtices. *Dalt. c.* 82.

5. And *if the truth cannot be found in the manner as is aforeſaid, then within a month then next following, the juſtices, three, or two of them, and the ſheriff or under ſheriff, ſhall certify before the king and his council, all the deed and circumſtances thereof, which certificate ſhall be of the like force as the preſentment of* 12 *men; upon which certificate the offenders ſhall be put to anſwer, and ſhall be puniſhed according to the diſcretion of the king and his council.* 13 H. 4. c. 7. ſ. 2.

And

And if they do traverſe the matter ſo certified, the certificate and traverſe ſhall be ſent into the king's bench to be tried. id. ſ. 3.

And if the offence be not found, by reaſon of any maintenance or embracery of the jurors, then the ſame juſtices and ſheriff or under ſheriff ſhall in the ſame certificate certify the names of the maintainers and embracers, with their miſdemeanours. 19 H. 7. c. 13.

Shall certify] And it ſeemeth certain, that ſuch certificate, being in nature of an indictment at the common law, ought to comprehend the certainty of time, place, and perſons, and other material circumſtances, both of the riot and maintenance. 1 *Haw.* 165.

Before the king and his council] It ſeems clear, by the council being here diſtinguiſhed both from the chancery and king's bench, that the certificate ought to be made to the privy council board, and not to either of thoſe courts, which in ſome ſtatutes relating to judicial proceedings are taken for the king's council. 1 *Haw.* 165.

6. *And the ſaid juſtices and other officers ſhall execute their offices aforeſaid at the king's coſts, in going and continuing in doing their ſaid offices, by payment thereof to be made by the ſheriff, by indentures betwixt the ſaid ſheriff and juſtices, and ether officers aforeſaid, whereof the ſheriff upon his account in the exchequer ſhall have due allowance.* 2 H. 5. c. 8.

In order to the defraying of which, the ſaid ſtatute directs the fines of the offenders to be enlarged, and thereout the ſheriff may pay the charges of the ſaid juſtices; and of the jury, that is, for their diet; and the ſheriff's fees, and the like. *Dalt. c.* 82.

7. And *the juſtices dwelling nigheſt in the county, where ſuch riot, aſſembly, or rout ſhall be, together with the ſheriff or under ſheriff, ſhall do execution of the ſaid ſtatute of the* 13 H. 4. *every one upon pain of* 100l. *to the king.* ſ. 4.

The juſtices dwelling nigheſt] Although theſe only are liable to this penalty, yet if any others on notice ſhall neglect to ſupply their default, they are fineable at diſcretion. 1 *Haw.* 166.

But if any juſtices, who do not dwell neareſt to the place, do actually execute the ſtatute, they excuſe all the reſt. 1 *Haw.* 165.

Dwelling

Dwelling nigheſt in the county] Therefore if they dwell nigheſt, but in another county, they are not in danger of this penalty. 1 *Haw.* 166.

Shall do execution of the ſaid ſtatute] That is, in the whole, and not in part only; as by recording a riot, and not committing the parties. 1 *Haw.* 166.

VI. How by proceſs out of chancery.

By the 2 H. 5. c. 8. *If default be found in the two juſtices, ſheriff, or under ſheriff, then at the inſtance of the party grieved, a commiſſion ſhall be iſſued under the great ſeal, to inquire as well of the truth of the caſe for the complainant, as of ſuch default.*

And by the 2 H. 5. c. 9. and 8 H. 6. c. 14. *Rioters ſhall be taken by writ and proclamation out of chancery, on ſuggeſtion of two juſtices and the ſheriff, of the common fame of ſuch riot.*

A. Indictment for a riot.

Weſtmorland. THE *jurors for our lord the king upon their oath preſent, that* A. O. *late of the pariſh of* ——— *in the county of* ——— *yeoman,* B. O. *late of the ſame, yeoman,* C. O. *late of the ſame, yeoman, and divers other perſons (to the jurors aforeſaid as yet unknown) on the* ——— *day of* ——— *in the* ——— *year of the reign of* ——— *at the pariſh aforeſaid, in the county aforeſaid, with force and arms, unlawfully, riotouſly, and routouſly did aſſemble and gather together, to diſturb the peace of our ſaid lord the king; and ſo being then and there aſſembled and gathered together, in and upon one* A. I. *in the peace of God and of our ſaid lord the king then and there being, unlawfully, riotouſly, and routouſly, did make an aſſault, and him the ſaid* A. I. *then and there unlawfully, riotouſly, and routouſly did beat, wound, and ill treat, and other wrongs to the ſaid* A. I. *then and there unlawfully, riotouſly, and routouſly did, to the great damage of the ſaid* A. I. *and againſt the peace of our ſaid lord the king, his crown and dignity.*——

B. Record of a riot on view.

Weſtmorland. BE *it remembred, that on the* ——— *day of* ——— *in the* ——— *year of the reign of* ——— *We* J. P. *and* K. P. *eſquires, two of the juſtices of our ſaid lord the king, aſſigned to keep the peace in the ſaid county,*

county, and A. S. *knight, ſheriff of the ſaid county, at the complaint and requeſt of* A. I. *of* ——— *in the county aforeſaid, yeoman, in our proper perſons have come to the manſion houſe of him the ſaid* A. I. *in* ——— *aforeſaid, and then and there do find* A. O. *of* ——— *yeoman,* B. O. *of* ——— *yeoman,* C. O. *of* ——— *yeoman, and other malefactors and diſturbers of the peace of our ſaid lord the king to us unknown, to the number of* 11 *perſons in a warlike manner arrayed, to wit, with clubs, ſwords, and guns, unlawfully, riotouſly, and routouſly aſſembled, and the ſame houſe beſetting, many evils againſt him the ſaid* A. I. *threatening, to the great diſturbance of the peace of our ſaid lord the king, and terror of his people, and againſt the form of the ſtatute in that caſe made and provided. And therefore we the aforeſaid* J. P. K. P. *and* A. S. *the aforeſaid* A. O. B. O. *and* C. O. *do then and there cauſe to be arreſted, and to the next gaol of our ſaid lord the king in the county aforeſaid to be conveyed, by our view and record of the unlawful aſſembly, riot, and rout aforeſaid convicted, there to remain every and each of them reſpectively, until they ſhall ſeverally and reſpectively have paid to our ſaid lord the king the ſeveral ſum of* 10 *l. each, which we do impoſe upon them and every of them ſeparately for their ſaid offence. In teſtimony whereof, to this our preſent record we do put our ſeals. Dated at* ——— *aforeſaid, the day and year aforeſaid.*

C. Commitment of the rioters upon view.

Weſtmorland. J P. *and* K. P. *eſquires, two of the juſtices of our lord the king, aſſigned to keep the peace within the ſaid county, and* A. S. *knight, ſheriff of the ſaid county: To the keeper of the gaol of our ſaid lord the king at* ——— *in the ſaid county, and to his deputy and deputies there, and to every of them greeting.*

Whereas upon complaint made unto us by A. I. *of* ——— *yeoman, we did this preſent* ——— *day of* ——— *go to the houſe of the ſaid* A. I. *at* ——— *aforeſaid, and there did ſee* A. O. *of* ——— *yeoman,* B. O. *of* ——— *yeoman,* C. O. *of* ——— *yeoman, and other malefactors to us unknown, aſſembled together in an unlawful, routous, and riotous manner, to the terror of the people, and againſt the peace of your ſaid lord the king, and againſt the form of the ſtatute in that caſe made and provided: We do therefore ſend you, by the bringers hereof, the bodies of the ſaid* A. O. B. O. *and* C. O. *convicted of the ſaid riot, rout, and unlawful aſſembly, by our own view, teſtimony, and record; commanding you in the name of our ſaid lord the king, to receive them into the ſaid gaol,*

and them and every of them respectively there safely to keep until they and every of them shall respectively pay to our said lord the king, the several and respective sum of 10 *l. each, which we have set and imposed upon them, and each and every of them separately for the said offence. Given under our hands and seals at* ——— *aforesaid, in the county aforesaid, the day and year aforesaid.*

D. Precept to summon a jury.

Westmorland. J P. *and* K. P. *esquires, two of the justices of our lord the king, assigned to keep the peace in the county aforesaid, and also to hear and determine divers felonies, trespasses, and other misdemeanors in the said county committed, To the sheriff of the said county, greeting. On the behalf of our said lord the king we command you, that you cause to come before us at* ——— *in the county aforesaid, on the* ——— *day of* ——— *next ensuing,* 24 *honest and lawful men of the county aforesaid, every one of which to have lands and tenements within the said county to the yearly value of* 20*s. of charter land or freehold, or of* 26*s.* 8*d. of copyhold, or of both, over and above all charges, to inquire for our said lord the king, and for our indemnity in this behalf, upon their oath, of certain riots, routs, and unlawful assemblies at* ——— *in the county aforesaid, lately committed, as it is said; And that you return upon every person so by you to be impanelled* 20*s. of issues at the aforesaid day, to be by them respectively forfeited if they shall not appear and be sworn to inquire of the premisses at the said time and place. And this you shall in no wise omit, on pain of* 20 *l. Given under our hands and seals at* ——— *aforesaid, in the county aforesaid, the* ——— *day of* ——— *in the* ——— *year of the reign of* ———.

Jurors oath.

YOU *shall true inquiry and presentment make of all such things as shall come before you, concerning a riot, rout, and unlawful assembly said to have been lately committed at* ——— *in this county; you shall spare no one for favour or affection, nor grieve any one for hatred or ill will, but proceed herein according to the best of your knowledge, and according to the evidence that shall be given to you: So help you God.*

The oath which you foreman hath taken on his part, you and every of you shall well and truly observe and keep on your parts; So help you God.

The inquisition, indictment or presentment of the jury.

Westmorland. AN *inquisition for our lord the king, indented and taken at* ——— *in the county aforesaid, the* ——— *day of* ——— *in the* ——— *year of the reign of* ——— *by the oath of* ——— *honest and lawful men of the county aforesaid, before* J. P. *and* K. P. *esquires, justices of our said lord the king, assigned to keep the peace in the said county, and also to hear and determine divers felonies, trespasses, and other misdemeanors in the said county committed, who say upon their oath aforesaid, that* A. O. *of* ——— *yeoman,* B. O. *of* ——— *yeoman,* C. O. *of* ——— *yeoman, together with other malefactors and disturbers of the peace of our said lord the king, to the jurors aforesaid as yet unknown, on the* ——— *day of* ——— *now last past at* ——— *aforesaid, in the county aforesaid, with force and arms, to wit, with clubs, swords, and guns, unlawfully, routously, and riotously did assemble, to disturb the peace of our said lord the king; and so being then and there assembled and gathered together, the mansion house of* A. I. *yeoman, at* ——— *aforesaid, unlawfully, routously, and riotously did enter, and in and upon him the said* A. I. *then and there unlawfully, routously, and riotously did made an assault, and him the said* A. I. *then and there unlawfully, routously, and riotously did beat, wound, and ill treat, in disturbance of the peace of our said lord the king, and to the terror of his people, and against the form of the statute in such case made and provided.*

We whose names are hereunto set, the aboveſaid jurors, do find this inquisition true;
A. B.
C. D. &c.

We the justices aboveſaid do hereby impose the fines here under written, on the aboveſaid offenders;
A. O. 20*l.*
B. O. 20*l.*
C. O. 20*l.*

Rivers and navigation.

Deſtroying banks and other works.

1. BY the 4 *G.* 3. *c.* 12. Whereas the laws now in being are not ſufficient for the preſervation of the banks, floodgates, ſluices, and other works, belonging to rivers and ſtreams made navigable by act of parliament, and for maintaining the navigation on ſuch rivers and ſtreams; it is enacted, that if any perſon ſhall wilfully or maliciouſly break, throw down, damage or deſtroy, any banks, floodgates, ſluices, or other works, or open or draw up any floodgate, or do any other wilful hurt or miſchief to any ſuch navigation, ſo as to obſtruct, hinder, or prevent the carrying on, compleating, ſupporting, or maintaining ſuch navigation; he ſhall be guilty of felony, and tranſported for 7 years. *ſ.* 5.

But by a former ſtatute, viz. 8 *G.* 2. *c.* 20. which was continued from time to time, and by the 27 *G.* 2. *c.* 16. made perpetual; If any perſon ſhall, either by day or night, wilfully or maliciouſly pull down, cut down, pluck up, throw down, level or otherwiſe deſtroy, any lock, ſluice, floodgate, or other works, on any navigable river, erected or to be erected by authority of parliament; or reſcue any perſon in cuſtody for ſuch offence; he ſhall be guilty of felony without benefit of clergy. And the offender may be tried in an adjacent county. But the attainder ſhall not work corruption of blood, loſs of dower, or forfeiture of lands or goods. Perſons diſcovering and convicting an accomplice ſhall have a pardon. And the hundred ſhall anſwer damages, not exceeding 20*l.*; to be recovered as in caſes of robbery. *ſ.* 1, 3, 4, 5, 6.

And if any perſon ſhall wilfully and maliciouſly draw or pluck up any floodgate fixed or made in any wear or lock, erected or to be erected by authority of parliament, in or upon any navigable river, for preſerving the navigation thereof; he ſhall, on conviction upon the oath of one witneſs, before two juſtices of the county or place, or of the adjacent county or place, be ſent to the houſe of correction to hard labour for one month. *ſ.* 2.

[It ſeemeth to be the offence in this latter clauſe which is made tranſportation by the aforementioned act; the offences in the former clauſe being more ſeverely puniſh-

able

able by that clauſe than by the aforeſaid act of the 4 *G.* 3. *c.* 12.]

2. By the 19 *G.* 2. *c.* 22. If any perſon acting as maſter of a ſhip, ſhall caſt out, or there ſhall be caſt out, of any veſſel being within any haven, road, channel, or navigable river, any ballaſt, or rubbiſh, but only on the land were the tide never comes; any one juſtice near the place, may ſummon the maſter or owner, or other perſon acting as ſuch, againſt whom the information ſhall be made, or iſſue his warrant to bring him before him; and upon due proof made, either by confeſſion of the party offending, or on view of ſuch juſtice, or oath of one witneſs, that any ballaſt or rubbiſh hath been caſt out, the maſter, or perſon acting as ſuch, ſhall be adjudged the offender, and ſhall forfeit not above 5 l. nor under 50 s. half to the informer, and half to the poor of the pariſh or place where ſuch conviction ſhall be pronounced: To be levied by diſtreſs of the goods of the perſon ſo convicted, or of the ſhip or tackle; and the ſame, if not redeemed in five days, to be ſold, rendering the overplus, if any be, after demand in writing, charges of diſtreſs and ſale being firſt deducted. For want of ſufficient diſtreſs, to be committed to gaol or to the houſe of correction where the conviction ſhall be, for two months, or till payment of the penalties, or ſo much thereof for which the commitment ſhall be. Filling up havens.

And as ſoon as any veſſel ſhall be ſunk, ſtranded, or run aſhore, in any harbour, channel, or navigable river, or be brought in, or be there in a ſhattered condition, and permitted to remain there, and the owner or maſter ſhall begin to take down, or carry away any of the rigging, or tackle, or if there ſhall not be any perſon to take care of ſuch veſſel; any one juſtice for the county or place, or near which ſuch fact ſhall happen, ſhall on information thereof ſummon the owner, or other perſon having or pretending to have the command thereof, or iſſue his warrant to bring him before him; and on conviction ſhall iſſue his warrant for ſeizing and removing ſuch veſſel, and alſo the rigging and tackle thereof, in ſuch manner as he ſhall order and direct; if ſuch perſon ſhall not within five days give ſatisfactory ſecurity to the juſtice, to clear the harbour of ſuch veſſel, and of all wreck and parts thereof, and pay the charges of ſeizing, removing, and diſpoſing of the veſſel and furniture, then the juſtice ſhall cauſe the hulk and tackle to be ſold, and with the money pay the charges of clearing the place where the veſſel ſhall lie, and of

ſeizing, removing, and ſelling the ſame, rendering the overplus to the owner of the manor where the ſame ſhall happen. *M.* 32 *G.* 2. *Bruckleſbank* and *Smith.* On a ſpecial verdict from *Northumberland* aſſizes, it was ſtated, that the defendant Mr. *Smith* was a juſtice of the peace for the town and county of *Newcaſtle upon Tyne*; and that the plaintiff was maſter of a ſhip, floating in the river *Tyne*, being a navigable river; that three tons of ballaſt and more were unloaded out of the ſaid ſhip, into a machine or veſſel, called a hopper, in the ſame river, with intent that it ſhould be carried therein into the high and open ſeas; and that it was accordingly carried out of the ſaid river into the high and open ſeas, and was there caſt out of the ſaid hopper, where the water was more than 14 fathom deep, at a diſtance from any port, haven, channel, or navigable river: whereupon the ſaid Mr. *Smith* convicted the plaintiff as an offender againſt this act. And the plaintiff brought his action. It was urged, on behalf of the plaintiff, that this was no offence within the meaning of the act; that the miſchief which the legiſlature had in view, was throwing the ballaſt or rubbiſh either on the ſhore, or the ſides of rivers, and below the full ſea mark. But this was in the open and high ſea, above 14 fathom deep, at a diſtance from any port, haven, channel, or river. By lord *Mansfield*, Ch. J. This is a general queſtion, which goes farther than this particular caſe: But it is a very plain and clear caſe, and expreſly againſt the prohibition of the act; which provides, that it ſhall not be thrown but upon the land. Whereas this man ſays, that he has found a better way, than that which the act has expreſly preſcribed: But here is ſuch an opening to fraud in this way, that he has thought a better one, that it would be dangerous to truſt to this method, though it were not prohibited. However, it is enough, that it is contrary to the direct and expreſs proviſion of the act. Indeed, if it was put upon the hopper, in order merely to carry it upon the land; that would only be the proper means of doing it, and therefore would not be an offence within the act: But this is with intent to lay it in the water; and there can be no ſecurity as to the place where the hopper may drop it. It is mighty eaſy, from the conſtruction of the hopper, to drop it privately. And it is alſo the intereſt of the perſon who carries it in the hopper, to drop it as ſoon as he can; that he may come the ſooner again to fetch more. The ſhifting it out of one ſhip into another, without intention to drop it any where, would not be a caſe within the act: For that

that would not be a caſting or throwing out at all, within the meaning of the act. And judgment was given by the court, unanimouſly, for the defendant the juſtice. *Burrow, Manſfield.* 656.

Stealing goods on a navigable river.

3. By the 24 *G.* 2. *c* 45. All perſons who ſhall feloniouſly ſteal any goods of the value of 40 s. in any ſhip, boat, or veſſel, on any navigable river, or in any port of entry or diſcharge, or from any wharf or key, or ſhall be preſent and aiding therein, ſhall be excluded from the benefit of clergy.

Robbery.

I. What it is.
II. Aſſaulting with intent to rob.
III. Levying hue and cry on a robbery committed.
IV. Hundred when liable to anſwer damages.
V. Manner of bringing the action againſt the hundred.
VI. Damages how to be levied and applied.
VII. Reward for apprehending a robber.
VIII. Pardon for diſcovering an accomplice.
IX. Principal and acceſſary in robbery.
X. Puniſhment of robbery.
XI. What ſhall be done with the goods of which a perſon is robbed.

I. What it is.

Two kinds of robbery.

1. THERE are two kinds of robbery; from the *perſon*, and from the *houſe*: It is the former of theſe that is treated of under this title: the latter, *viz.* robbery from the houſe, belongeth to the titles Larceny and Burglary.

Derivation of the word robbery.

2. Robbery, lord *Coke* ſays, is derived from the *French de la robe*, both becauſe they bereave the true man of his *robes*, and alſo for that his money is taken by them from ſome part of his garment, or robes about his perſon. But in truth the word ſeemeth to be much ancienter than the introduction of the *French* into our language; and probably

was deduced unto us through the channel of *Saxony* or *Denmark*. *Robber*, in the *Saxon* is *reofere*; in the *Low Dutch*, *roover*; in the *Daniſh*, *roffure*; by a tranſmutation of the letters *b*, *f*, and *v*, frequent in all kindred languages. The *Gothick* tranſlation of the goſpels uſed *biraubodedun* to ſignify *they robbed*, from *birauban*, *to rob*; which being ſtripped of the prefix augmentative is *rauban*. The *Saxons* expreſſed the ſame by *bereafodon*, which we ſtill preſerve when we ſay *they bereaved*; and in the northern parts of *England*, the words *robbing* and *reaving* are ſtill uſed promiſcuouſly to ſignify rapine and plunder; and when the violent winds do ſtrip a houſe of its thatch or covering, it is called *reaving*.

Definition of robbery.

3. Robbery *is a felony by the common law, committed by a violent aſſault upon the perſon of another, by putting him in fear, and taking from his perſon, his money or other goods, of any value whatſoever.* 3 Inſt. 68.

A felony] For to make it robbery, there muſt be a felonious intention; and ſo it ought to be laid in the indictment. 1 *H. H.* 532.

By putting him in fear] In the caſe of *Macdaniel* and others, at the *Old Bailey* ſeſſions in *December* 1755, *Stephen Macdaniel*, *John Berry*, *James Eagan*, and *James Salmon*, were indicted as acceſſaries before, to a robbery committed by *Peter Kelly* and *John Ellis* on the perſon of the ſaid *James Salmon*. The jury found a ſpecial verdict, that *Kelly* and *Ellis* were convicted of the ſaid robbery; that before the robbery, all the priſoners and one *Thomas Blee*, in order to procure to themſelves the rewards given by act of parliament for apprehending robbers, did meet at the *Bell* inn in *Holbourn*, and agreed that the ſaid *Blee* ſhould procure two perſons to commit a robbery on the priſoner *Salmon*; that for that purpoſe, they contrived that *Blee* ſhould inform the perſons ſo to be procured that he would aſſiſt them in ſtealing ſome linen in the pariſh of St. *Paul*, *Deptford*; that in purſuance of this agreement, and with the privity of all the priſoners, the ſaid *Blee* did procure *Ellis* and *Kelly* to go with him to *Deptford* in order to ſteal linen, but did not at any time before the robbery inform them of the intended robbery; that they went with *Blee* to *Deptford*, and the priſoner *Salmon* being likewiſe waiting there in purſuance of the agreement, they robbed him of the money and goods mentioned in the indictment: They further find, that none of the priſoners had any converſation with *Ellis* and *Kelly*

previous

previous to the robbery, but that *Macdaniel*, *Eagan*, and *Berry* ſaw them and approved of them as proper for the purpoſe of robbing *Salmon*. This was argued before all the judges; who were unanimouſly of opinion, that ſuppoſing a robbery to have been committed, all the priſoners were guilty as acceſſaries before, except *Salmon*, who could not be acceſſary to the robbing of himſelf; but foraſmuch as the goods were taken from *Salmon* in purſuance of the agreement beforementioned, they were of opinion that in legal conſtruction he was not robbed at all, ſince it is of the eſſence of robbery, that the goods be taken againſt the will of the owner; altho' the circumſtance of putting in fear is perhaps not neceſſary to be inſerted in the indictment, at leaſt it need not to be ſtrictly proved, for if a man is knocked down without any previous warning and thereby rendered inſenſible, or if he manfully reſiſts and is overpowered without being under any fear at all, it is not the leſs robbery upon that account. And the priſoners were diſcharged of the indictment.—But afterwards an indictment was found againſt them, and proſecuted at the expence of the crown on the repreſentation of the judges, for a conſpiracy; in which the principal facts found by the ſpecial verdict in the robbery bill were charged. On this indictment they were all convicted; and the court gave judgment, that they be all ſet in and upon the pillory twice; that they ſtand committed for ſeven years, and until they find ſureties for their good behaviour for three years afterwards. One of them *(Eagan)* loſt his life in the pillory, thro' the reſentment of the populace. And on that account, the others did not ſtand a ſecond time. But they were all in *Newgate* very cloſely confined in purſuance of their ſentence. *Foſt.* 121.

And taking from his perſon] Taking a thing in a man's preſence is in law a taking from the perſon. *Hale's Pl.* 73. *Str.* 1015. *K.* againſt *Francis* and others.

Thus, if one take or drive my cattle out of my paſture, in my preſence, this is robbery, if he make an aſſault upon me, or put me in fear. *Hales's Pl.* 73.

II. Aſſaulting with intent to rob.

1. If any perſon ſhall with any offenſive weapon aſſault, or by menaces, or in any forcible or violent manner, demand any money or goods, with a felonious intent to rob him, Aſſaulting with intent to rob.

him, he ſhall be guilty of felony, and be tranſported for ſeven years. 7 *G.* 2. *c.* 21.

Killing a perſon intending to rob.

2. If any perſon be indicted, or appealed, for killing any perſon attempting to rob, he ſhall be acquitted. 24 *H.* 8. *c.* 5.

III. Levying hue and cry on a robbery committed.

Hue and cry.

Immediately upon robberies committed, freſh ſuit ſhall be made from town to town, and from county to county. 13 *Ed.* 1. *ſt.* 2. *c.* 1.

IV. Hundred when liable to anſwer damages.

Hundred ſhall anſwer.

1. The hundred where the offence was committed, ſhall be anſwerable for the robberies, and for the damages if the offender be not taken. 13 *Ed.* 1. *ſt.* 2. *c.* 2. 28 *Ed.* 3. *c.* 11.

Hundred neglecting hue and cry, ſhall contribute.

2. But ſuch hundred may recover back half the damages, from any other hundred where freſh ſuit after hue and cry ſhall not be made. 27 *El. c.* 13. *ſ.* 2.

Hundred not anſwerable, if a robber is apprehended.

3. But the hundred ſhall not be chargeable, if one robber be apprehended in 40 days from the publication in the gazette; as is hereafter mentioned. 8 *G.* 2. *c.* 16. *ſ.* 3.

Nor for a robbery in a new highway.

4. Alſo, a new highway changed for an ancient one, without a writ of *ad quod damnum*, and an inquiſition found thereon, is ſaid not to be ſuch a highway, in which the inhabitants are bound to watch, nor to make amends for a robbery therein committed. 1 *Haw.* 202.

Nor if on the lord's day.

5. Likewiſe if any perſon, which ſhall travel upon the lord's day, ſhall be then robbed, the hundred ſhall not be liable: nevertheleſs they ſhall make hue and cry, on pain of forfeiting to the king as much as might have been recovered againſt the hundred, if the robbery had not been on the lord's day. 29 *C.* 2. *c.* 7. *ſ.* 5.

Which ſhall travel] *M.* 7 *G. Taſhmaker* againſt the hundred of *Edmonton*. The plaintiff lived a mile or two from the church, and going thither with his lady in his coach upon a *ſunday*, was robbed; and brought his action againſt the hundred, and recovered; for the ſtatute extends only to the caſe of *travelling*: But *Pratt* Ch. J. ſaid, if they had been going to make viſits, it might have been otherwiſe. *Str.* 406. *Comyns* 345.

6. Alſo

6. Alſo, if any man be robbed in his houſe, the hundred ſhall not be charged therewith, whether it be done by day or night; becauſe every man's houſe is his caſtle, which he ought to defend; and if any one is robbed in his houſe, it ſhall be eſteemed his own fault. *Dalt. c.* 84. Nor if it be in an houſe.

7. Alſo, a robbery done in the night, ſhall not charge the hundred; but yet if it be in the day time, or there be ſo much day light as that one may ſee a man's face, ſo that the robber may be known, though it be before the ſun riſing, or after the ſun ſetting, the hundred ſhall anſwer for it. *Dalt. c.* 84. Not if it be in the night.

8. By the 22 *G.* 2. *c.* 84. No perſon ſhall recover againſt the hundred, more than the value of 200 *l.* unleſs the perſons robbed, ſhall at the time of the robbery be together in company, and be in number two at the leaſt, to atteſt the truth of his or their being ſo robbed. In what caſe there muſt be two in company.

9. And by the yearly land tax acts, no receiver general, or any of his agents employed for carrying any money on account of the ſaid tax, ſhall maintain an action againſt the hundred for being robbed, unleſs the perſons carrying ſuch money be together in company, and be in number three at the leaſt. In what caſe three in company.

V. Manner of bringing the action againſt the hundred.

In order to make the hundred liable, theſe things following muſt be done:

1. *The perſon robbed ſhall, with as much convenient ſpeed as may be, give notice thereof, unto ſome of the inhabitants near the place.* 27 El. c. 13. ſ. 11. Notice to the habitants.

And though that place, where notice is given, be in another hundred or county, yet it is good enough; for a ſtranger may not know the confines of the hundred or county; and that hundred where notice is given muſt make hue and cry, and by that means the hundred where the robbery was committed will ſoon know thereof. *Cro. Car.* 41, 379. 3 *Salk.* 184.

2. *He ſhall alſo give notice, with as much convenient ſpeed as may be, to a conſtable of the hundred, that is, the high conſtable, or to a conſtable of ſome place near; or leave notice in writing at his houſe, deſcribing therein the felon, and the time and place of the robbery.* 8 G. 2. c. 16. ſ. 1. Notice to a conſtable.

M. 16 *G.* 2. *Ball* againſt the hundred of *Wymerſley*. Upon a caſe made at the aſſizes, it was ſtated, that ſoon after ſix in the morning, the plaintiff was robbed at two miles and

and a half diſtance from *Northampton*, and the highwayman cut his bridle and ſtirrups, threw them into a ditch, and turned his horſe looſe; that the plaintiff recovered them, remounted, rode through a village called *Cotton*, where he gave no notice, met three men on the road whom he informed of the robbery, and arrived at *Northampton* by ſeven o'clock, and gave notice to an innkeeper there, from whence he went to *Rotherthorpe*, three miles off, where the high conſtable lived, and between eight and nine gave notice, And whether this notice was ſufficient to maintain the action, was the queſtion. And the court on argument held it to be good notice, for the high conſtable is the propereſt perſon to go to, and it is not required that he go to the next conſtable. It appears the plaintiff loſt no time, conſidering the circumſtances he was in: and *Rotherthorpe* is not at ſuch a diſtance, but that it may come within the meaning of the word *near*. So the plaintiff had judgment. *Str.* 1170.

And every conſtable to whom ſuch notice ſhall be given, and every high and petty conſtable within the hundred, as ſoon as the ſame ſhall come to his knowledge, by the party robbed, or by any to whom ſuch notice hath been given, ſhall with the utmoſt expedition make and cauſe to be made freſh ſuit and hue and cry after the felons, on pain of 5*l.* with full coſts, half to the king, and half to him who ſhall ſue in ſix months. 8 *G.* 2. *c.* 16. *ſ.* 11, 12. Note; the penalty here is but ſmall; but as the not purſuing hue and cry was alſo an offence at the common law, the offender may be indicted at the common law, and thereupon fined and impriſoned.

Notice in the gazette.

3. The party robbed ſhall alſo, within 20 days, cauſe notice to be given in the gazette, deſcribing therein the felon, and the time and place of the robbery, and the goods and effects whereof he was robbed. 8 *G.* 2. *c.* 16. *ſ.* 1.

To be examined on oath.

4. *He ſhall alſo be examined on oath within twenty days next before the action brought, before a juſtice in or near the hundred, whether he knows any of the robbers; and if he confeſſes that he does, he ſhall before the action brought, be bound over by the ſaid juſtice effectually to proſecute the perſon or perſons ſo known to have committed the ſaid robbery.* 27 *El. c.* 13. *ſ.* 11.

He ſhall alſo be examined] That is, the party robbed, who is to bring the action, ſhall be examined. But here note a diverſity. *T.* 2 *Car. Raymund* and the hundred of *Oking*. The *ſervant* was robbed of his maſter's goods,

and the ſervant made oath before a juſtice, and the maſter brought the action againſt the hnndred. By the court; The action well lies for the maſter; and the ſervant's oath is ſufficient, for it was properly in his notice, that he was robbed, and did not know any of the robbers, and the maſter knows it not that he was robbed, or who were the perſons, but by report of his ſervant; and it would be inconvenient, if the maſter ſhould not bring the action, but the ſervant only; for the ſervant might releaſe, or compound, or diſcontinue the ſuit, and ſo the maſter ſhould have the loſs by his falſehood: therefore the maſter ſhall bring the action, and have his ſervant who was robbed, to be his witneſs. *Cro. Car.* 37.

Within 20 *days next before*] And the time of making ſuch oath muſt be laid in the declaration, for that is traverſable. 3 *Salk.* 184.

Before a juſtice] And if the juſtice ſhall refuſe upon his requeſt, to examine him, an action will lie againſt the juſtice; becauſe he doth not act therein as a judge of record, but as a miniſter appointed for the examination by the ſtatute. *Cro. Car.* 211.

Whether he knows any of the robbers] H. 19 *G.* 2. *William King* againſt the hundred of *Biſhop's Sutton.* In an action brought againſt the hundred, the oath proved was, that he had *good reaſon to ſuſpect* the fact was done by *Robert Gibbs* and *William Langford*, both of ſuch a pariſh. And a doubt ariſing at the aſſizes, whether this was ſufficient or not, a caſe was made, and twice argued at the bar. And upon the ſecond argument, the court were of opinion, that the examination did not maintain the action. The oath required is a condition precedent, and for the ſake of the hundred, and to prevent ſcreening the offenders. There is a great deal of difference between *ſuſpecting* and *knowing*: a man who *knows* the offender may purpoſely ſtop at the word *ſuſpect*; to avoid being bound to proſecute: and though it would be equivocating, yet it would hardly be perjury aſſignable; it being only a ſuppreſſion of part of the truth. He ſhould have ſaid, *I ſuſpect them to be the men, but I do not know it.* It will be dangerous to let them go out of the words of the act, and therefore the plaintiff failed in the action, and paid the coſts of a nonſuit. *Str.* 1247.

5. Alſo

Bond to pay coſts.

5. Alſo before the action be commenced, he ſhall go before the chief clerk, or ſecondary, or the filazer of the county, or the clerk of the pleas of that court wherein ſuch action is intended to be brought, or their deputies, or before the ſheriff of the county, and enter into 100 *l.* bond, to the high conſtable, with two ſufficient ſureties, to pay him coſts, if he (the proſecutor) ſhall be caſt. And no greater fee ſhall be taken for the bond, than 5 *s.* above the ſtamp. 8 *G.* 2. *c.* 16. *ſ.* 1, 2.

Bond to be certified.

6. If bond is taken before the ſheriff, he ſhall immediately certify the ſame in writing, to the reſpective officer abovementioned; which certificate the perſon robbed ſhall deliver to ſuch officer before the action is brought: and he ſhall pay not more than 2 *s.* 6 *d.* fee to the ſheriff for making ſuch certificate, nor more than 2 *s.* 6 *d.* to the officer for receiving and filing the ſame. And the bond ſhall be delivered to the high conſtable *gratis*. 8 G. 2. c. 16. ſ. 2.

Time of bringing the action.

7. All this being done, and 40 days being expired from the day of the publication in the gazette (for if one of the offenders is apprehended within that time, the action will not lie, 8 *G.* 2. *c.* 16. *ſ.* 3.); and alſo a whole year not being expired from the time of the robbery committed (for if a year is expired, in ſuch caſe alſo the action will not lie, by the 27 *El. c.* 13. *ſ.* 9.) But all theſe things being regularly and duly performed, then the action may be brought.

Proceſs to be ſerved on the high conſtable.

8. And the proceſs ſhall be ſerved on the high conſtable only; who ſhall cauſe publick notice thereof to be given in one of the principal market towns on the next market day; and if there is no market town in the hundred, then in ſome pariſh church within the hundred, on the next *ſunday* immediately after divine ſervice. He ſhall alſo enter appearance, and defend the action, as he ſhall be adviſed. 8 *G.* 2. *c.* 16. *ſ.* 4.

Inhabitants may be witneſſes.

9. On the trial; any inhabitant may be a witneſs for the hundred. 8 *G.* 2. *c.* 16. *ſ.* 15.

VI. Damages how to be levied and applied.

Writ of execution to be ſhewn to two juſtices.

1. If the plaintiff recover, the ſheriff ſhall ſhew the writ of execution to two juſtices (1 *Q.*) in or near the hundred. 27 *El. c.* 13. *ſ.* 5. 8 *G.* 2. *c.* 16. *ſ.* 4.

And the high conſtable's charge.

2. The high conſtable alſo ſhall cauſe his attorney's bill to be taxed by the proper officer, and ſhall give in to the ſaid juſtices an account thereof, and of his other expences in

in defending the action, and make due proof of the ſame upon oath, to the ſatisfaction of the ſaid juſtices. 8 *G.* 2. *c.* 16. *ſ.* 4.

3. The ſaid two juſtices ſhall thereupon cauſe a taxation to be made, and levied in 30 days, upon every diviſion within the hundred, by the conſtables, by diſtreſs and ſale. 8 *G.* 2. *c.* 16. *ſ.* 4, 10. Taxation.

4. And the conſtables ſhall in ten days pay the ſame to the ſheriff, and the ſheriff ſhall pay the ſame without fee to the plaintiff for his coſts and damages, and to the high conſtable for his expences. 8 *G.* 2. *c.* 16. *ſ.* 4, 5. Payment.

5. The high conſtable ſhall in like manner, if he recovers againſt the plaintiff, be reimburſed his expences which ſhall be over and above the coſts to be taxed, and alſo ſuch coſts taxed as he ſhall not be able to recover, by reaſon of the inſolvency of the plaintiff and of his ſureties; which ſhall be paid in ten days to the ſaid two juſtices, or one of them, who ſhall upon requeſt deliver over the ſame to the high conſtable. 8 *G.* 2. *c.* 16. *ſ.* 7, 8. High conſtable to be reimburſed, if the plaintiff is caſt.

6. And the ſheriff ſhall not be obliged to return the writ of execution, till after 60 days from the time it ſhall be delivered to him; that there may be time for the taxation, aſſeſſment, and collecting the money. 8 *G.* 2. *c.* 16. *ſ.* 6. Return of the writ.

VII. Reward for apprehending a robber.

1. Any perſon or perſons apprehending a felon, whereby the hundred becomes indemnified, ſhall have 10 *l.* reward paid by the hundred; the ſame to be aſcertained, levied, and paid by two juſtices (1 Q.) in or near the hundred, in ſuch proportions as they ſhall think reaſonable, within the hundred. 8 *G.* 2. *c.* 16. *ſ.* 9. 10 l. by the hundred.

2. And moreover, every perſon who ſhall apprehend a highwayman, and proſecute him till he be convicted of any robbery committed in or upon any highway, paſſage, field, or open place, ſhall have from the ſheriff of the county where the robbery and conviction was made and done, without paying any fee for the ſame, the ſum of 40 *l.* within one month after ſuch conviction and demand thereof made, by tendering a certificate to the ſheriff, under the hand of the judge, certifying the conviction of ſuch felon for a robbery done within the county of the ſaid ſheriff, and alſo that ſuch felon was taken by the perſon claiming the reward. 4 *W.* *c.* 8. *ſ.* 2. 40 l. by the king.

For

For which certificate ſhall be paid, for writing and drawing thereof, 5*s.* and no more. 6 *G. c.* 23. *ſ.* 8.

And if any diſputes ſhall ariſe between the perſons apprehending, touching their right to the reward, the judge ſhall by the ſaid certificate direct it to be paid unto and amongſt the parties claiming, in ſuch proportions as to him ſhall ſeem juſt and reaſonable. And if the ſheriff ſhall make default of payment, he ſhall forfeit double, with treble coſts. 4 *W. c.* 8. *ſ.* 2.

And the ſtreets of *London* and *Weſtminſter*, and of other cities, towns, and places, ſhall be deemed highways as to this matter. 6 *G. c.* 23. *ſ.* 8.

And the goods taken with the highwayman.

3. And as a further reward, ſuch perſon ſhall have moreover the horſe, furniture, and arms, money, or other goods of the robber, that ſhall be taken with him, notwithſtanding the right of the king, or lord of the manor, or of the perſon lending or letting the ſame to hire: but ſaving the right of them from whom they may have been feloniouſly taken. 4 *W. c.* 8. *ſ.* 6.

Perſons killed in app ehending a highwayman.

4. And if a perſon is killed in endeavouring to apprehend ſuch highwayman, the ſheriff ſhall pay the like ſum of 40*l.* without fee, under the like penalty, to the executors or adminiſtrators of the perſon killed; immediately, upon certificate delivered to him under the hand and ſeal of the judge of aſſize for the county where the fact was done, or the two next juſtices, of ſuch perſon being ſo killed: Which certificate, the ſaid judge, or juſtices, upon proof before them made, ſhall give immediately without fee. 4 *W. c.* 8. *ſ.* 3.

Sheriff to be allowed the reward in his accounts.

5. And the ſheriff ſhall have the ſaid rewards allowed to him in his accounts. 4 *W. c.* 8. *ſ.* 4.

VIII. Pardon for diſcovering accomplices.

Pardon for diſcovering accomplices.

If any perſon, being out of priſon, ſhall commit any robbery, and afterwards diſcover two or more perſons, who ſhall commit any robbery, ſo as two or more be convicted; he ſhall have the king's pardon for all robberies he ſhall have committed before ſuch diſcovery; which pardon ſhall be likewiſe a bar againſt any appeal for ſuch robbery. 4 *W. c.* 8. *ſ.* 7.

IX. Principal and acceſſary in robbery.

Acceſſary.

All that come in company to rob, are principals, though one only actually do it. *Hale's Pl.* 72.

X. Pu-

X. Puniſhment of robbery.

1. Robbery is generally excluded from the benefit of clergy. 3 *Inſt.* 68. 2 *Haw.* 531—537. 2 *H. H. c.* 48. Clergy.

2. And by the 20 *G.* 2. *c.* 52. Robbery is excepted out of the general pardon. Pardon.

3. By the 22 *G.* 2. *c.* 33. Robbery in the navy ſhall be puniſhed with death, or otherwiſe, as a court martial, on conſideration of the circumſtances, ſhall find meet. Navy.

XI. What ſhall be done with the goods of which a perſon is robbed.

1. If the perſon robbed doth not proſecute the robber; if his goods are waived in flight, or ſeized by the king's officers, or lord of the manor, he ſhall not have them reſtored. *Kely.* 49. Reſtitution of goods taken by robbery.

2. But if they are not waived in flight, nor ſeized by the king's officers, or the lord of the manor, he may take his goods again wherever he finds them, without the formality of reſtitution being awarded, if they be not ſold in open market; and this alſo, although he doth not proſecute the robber. *Kely.* 48.

3. But if he ſhall proſecute the robber to conviction; he ſhall have reſtitution, although they have been waived, and ſeized, and even ſold in open market. *Kely.* 48.

Notice in the gazette, before the action brought againſt the hundred.

NOTICE *is hereby given, (purſuant to an act of parliament made in the eighth year of the reign of his late majeſty king* George *the ſecond, intitled,* An act for the amendment of the law relating to actions on the ſtatute of hue and cry) *that* A. I. *of* ——— *in the county of* ——— *gentleman, on* ——— *the* ——— *day of* ——— *now laſt paſt, between the hours of eight and nine in the forenoon of the ſame day, was overtaken and robbed by two perſons, in the highway between* ——— *and* ——— *in the county of* ———, *one of them being a tall thin man, marked on the face with the ſmall pox, and having on a brown riding coat, mounted on a black mare; the other a middle ſized man, wearing his own hair of a light brown colour, and riding on a grey gelding; which perſons took from him the ſaid* A. I. *ten guineas in gold,*

ſeven ſhillings in ſilver, an halfpenny, and a ſilver watch, and then made off.

Examination of the perſon robbed, before the action brought.

Weſtmorland. THE *examination of* A. I. *of* —— *in the county aforeſaid, yeoman, taken on oath before me* J. P. *eſquire, one of his majeſty's juſtices of the peace for the ſaid county, dwelling in* [or *near to*] *the hundred of* —— *within the ſaid county, the* —— *day of* —— *in the* —— *year of the reign of* ———

Who ſaith, that on Monday *the* ——— *day of this preſent month of* ——— *between the hours of two and three in the afternoon of the ſame day, at or near a place called* ——— *he was aſſaulted in the highway there leading from* ——— *to* ——————— *by two horſemen, whereof one was a tall luſty man, wearing a black wig, and a blue grey coat, mounted on a bay gelding about fifteen hands high, with a black mane and tail, and ſtar in his forehead; and the other a middle ſized man, of a ſwarthy complexion, having a large ſcar on his left cheek having on a dark brown riding coat, and mounted on a black gelding; and by them robbed in the highway aforeſaid of the ſum of* ——— *in money, one ſilver watch of the value of* 4 l. *and one pocket book: And that he the ſaid* A. I. *at the time of the ſaid robbery committed, did not know, nor yet doth know, either of the ſaid perſons who committed the ſame: And that he is ſince informed, that the ſaid highway and place where he was ſo robbed as aforeſaid, are in the pariſh of* ——— *and within the hundred of* —— *in the ſaid county.*

Taken, made, and ſigned the day and year above written, before me, A. I.

J. P.

Indictment for a robbery.

Weſtmorland. THE *jurors for our lord the king upon their oath preſent, That* A. O. *late of* —— *in the county of* —— *labourer, on the* ——— *day of* ——— *in the* ——— *year of the reign of* ——— *with force and arms, at* ——— *in the county of* ——— *in the king's highway there, upon one* A. I. *in the peace of God and of our ſaid lord the king then and there being, feloniouſly did make an aſſault, and him the ſaid* A. I. *in bodily fear and danger of his life, in the highway aforeſaid, then and there feloniouſly*

feloniouſly did put, and one gold watch of the value of —— of the goods and chattels of him the ſaid A. I. *from the perſon, and againſt the will of the ſaid* A. I. *in the highway aforeſaid, then and there feloniouſly and violently did ſteal, take and carry away; againſt the peace of our ſaid lord the king, his crown and dignity.*

Note, the form of a warrant for apprehending a robber upon freſh ſuit, is inſerted under the title Hue and Cry.

Rout. See Riot.

Rum. See Exciſe.

Run goods. See Exciſe.

Sabbath. See Lord's Day.

Sail cloth.

BY the 9 *G.* 2. *c.* 37. (which by the 4 *G.* 3. *c.* 11. hath continuance to *Sept.* 29, 1771, *&c.*) every maker of *Britiſh* ſail cloth, ſhall ſtamp his name and place of abode in words at length on every piece; on pain of 10l. on conviction by the oath of one witneſs before one juſtice: And if any perſon ſhall wilfully obliterate the ſtamp, or ſtamp another perſon's name and place of abode, and not his own, he ſhall forfeit 5 l. (and by the 4 *G.* 2. *c.* 27. 10 l.) to the informer; by diſtreſs, by warrant of two juſtices.

Sacrilege. See Larceny, Burglary.

Salmon. See Game.

Salt. See Exciſe.

BY the 21 *J. c.* 28. *ſ.* 7. No ſanctuary or privilege of ſanctuary, ſhall be admitted or allowed in any caſe.

Scavengers.

WHERE the juſtices in any city or market town, not having already effectual proviſion made by any former law, at their general or quarter ſeſſions, ſhall judge it neceſſary to appoint a ſcavenger or ſcavengers for cleanſing the ſtreets therein; they may from time to time appoint ſuch perſons as they ſhall think fitting for that purpoſe; and alſo may order the repairing of ſuch ſtreets therein as they ſhall judge neceſſary. And for defraying the charges thereof, an aſſeſſment, not exceeding 6 d. in the pound in one year, may be laid upon the occupiers of houſes, lands, tenements, and hereditaments, in the reſpective pariſhes wherein ſuch ſtreets ſhall lie, within ſuch cities and market towns. And ſuch aſſeſſment ſhall be made by ſuch perſons, and levied and collected in ſuch manner, as the ſaid juſtices by their order at ſuch ſeſſions ſhall direct. Which aſſeſſment being allowed under the hands and ſeals of ſuch juſtices, may, if not paid in eight days after demand, be levied by their warrant by diſtreſs. And the money, when raiſed, ſhall be employed and accounted for, according to the orders of the ſaid juſtices, towards the repairing and cleanſing the ſaid ſtreets from time to time. 7 *G.* 3. *c.* 42. *ſ.* 44.

There are ſeveral acts which direct the paving and cleaning the ſtreets of particular cities and towns, which not being of general concern, are not here inſerted.

Schoolmaſters.

Diſſenters teaching without licence.

1. HOW far ſchoolmaſters, being proteſtant diſſenters, are exempted, as ſuch, from the penalties inflicted by the laws for teaching ſchool without licence, is treated of under the title Diſſenters.

Papiſt teaching ſchool.

2. If any papiſt ſhall keep ſchool, or take upon him the education, or government, or boarding of youth, he ſhall be adjudged to perpetual impriſonment. 11 & 12 *W.* *c.* 4. *ſ.* 3.

3. Where

3. Where a ſchoolmaſter, in correcting his ſcholar, happens to occaſion his death; if in ſuch correction he is ſo barbarous as to exceed all bounds of moderation, he is at leaſt guilty of manſlaughter; and if he make uſe of an inſtrument improper for correction, and apparently endangering the ſcholar's life, as an iron bar, a ſword, or kick him to the ground, and then ſtamp on his belly, and kill him, he is guilty of murder. 1 *Haw.* 73, 74. Schoolmaſter by correction killing his ſcholar.

Seamen.

FOR apprentices to the ſea ſervice, ſee the title **Apprentices.**

1. No liſted ſeaman ſhall be taken out of his majeſty's ſervice, by any proceſs, other than for ſome criminal matter, unleſs affidavit be firſt made, that the debt or damage amounts to 20 *l.* 31 *G.* 2. *c.* 10. *ſ.* 28. In what caſes they may be arreſted.

But the plaintiff may, on notice firſt given to the defendant, enter a common appearance, and proceed to judgment and outlawry, and have execution other than againſt his body. *ſ.* 29.

2. No court martial may puniſh or try any offence committed by any ſeaman in his majeſty's ſervice, which ſhall not be committed on the main ſea, or in great rivers beneath the bridges, or in a haven or creek within the juriſdiction of the admiralty; except in the caſe of ſpies, or of mutiny and deſertion, or diſobedience, or of offences committed on land in foreign countries. 22 *G.* 2. *c.* 33. *ſ.* 40. What offences the court martial may puniſh.

3. Seamen who have been employed in the king's ſervice ſince the acceſſion of king *George* the ſecond, and not deſerted, may ſet up and exerciſe ſuch trades as they are apt for, in any town or place in *Great Britain* or *Ireland*, without moleſtation (except in *Oxford* or *Cambridge*;) and if any perſon is ſued thereupon, and the plaintiff is caſt, ſuch perſon ſhall have double coſts. 22 *G.* 2. *c.* 44. 3 *G.* 3 *c.* 8. Where they may exerciſe trades.

4. A ſeaman, inſtead of being committed to the houſe of correction, for default of paying the penalty for ſwearing, ſhall be put in the ſtocks for one hour for every ſingle offence, and for any number of offences of which he ſhall be convicted at one and the ſame time, two hours. 19 *G.* 2. *c.* 21. *ſ.* 5. Convicted of ſwearing.

5. A ſeaman having a teſtimonial under the hand and ſeal of a juſtice of the peace, ſetting forth the time and In what caſe not to be deemed vagrants.

place of landing, and the place to which he is to paſs, and limiting the time of his paſſage, ſhall not be deemed a vagrant, while he continues in the direct way, and within the time limited. 17 *G.* 2. *c.* 5. *ſ.* 3.

In what caſe not to gain ſettlements by notice.

6. No ſeaman employed in his majeſty's ſervice, ſhall have any ſettlement in any pariſh, port town, or other town, by delivery and publication of a notice in writing, unleſs it be after his diſmiſſion out of his majeſty's ſervice. 3 *W.* *c.* 11.

Making diſturbance in the yards.

7. The treaſurer, controller, ſurveyor, clerk of the acts, or any of the commiſſioners of the navy, may puniſh ſeamen and others, making diſturbances in the yards or offices, and may bind them to their good behaviour, and to appear at the next aſſizes, or general quarter ſeſſions, to be proſecuted for ſuch offence. 1 *G.* *ſt.* 2. *c.* 25. *ſ.* 1, 2.

Perſonating ſeamen in his majeſty's ſervice, or their executors or adminiſtrators.

8. By the 31 *G.* 2. *c.* 10. Whoſoever willingly and knowingly ſhall perſonate or falſely aſſume, or procure any other to perſonate or falſely aſſume, the name or character of any officer, ſeaman, or other perſon, intitled or ſuppoſed to be intitled to any wages, pay, or other allowances of money, or prize money, for ſervice done on board of any of his majeſty's ſhips or veſſels; or willingly and knowingly ſhall perſonate or falſely aſſume the name or character of the executor or adminiſtrrtor, wife, relation, or creditor of any ſuch officer or ſeaman or other perſon, in order to receive any wages, pay, or other allowances of money or prize money as aforeſaid; or ſhall forge or counterfeit, or procure to be forged or counterfeited, any letter of attorney, bill, ticket, certificate, aſſignment, laſt will, or any other power or authority, in order to receive any ſuch wages, pay, or other allowances of money or prize money as aforeſaid; or ſhall willingly and knowingly take a falſe oath, or procure any other perſon to take a falſe oath, to obtain the probate of any will or letter of adminiſtration, in order to receive the payment of any wages, pay, or other allowances of money or prize money, due or that were ſuppoſed to be due to any ſuch officer, ſeaman, or other perſon as aforeſaid, who has really ſerved, or was ſuppoſed to have ſerved, on board of any of his majeſty's ſhips or veſſels; every ſuch perſon ſo offending ſhall be guilty of felony without benefit of clergy. *ſ.* 4.

Out penſioners of Greenwich hoſpital.

9. In like manner, by the 3 *G.* 3. *c.* 16. Whoever ſhall perſonate or falſely aſſume the name and character of an out penſioner of *Greenwich* hoſpital, in order to receive the out penſion due to him, or procure any other to do the

the ſame, ſhall be guilty of felony without benefit of clergy.

And in order to receive their penſion half yearly as it ſhall become due, ſuch penſioners ſhall, together with the printed bill delivered to them by the commiſſioners, produce a certificate under the hand of the miniſter and churchwardens where they reſide, that ſuch perſon is, to the beſt of their knowledge and belief, the perſon named in ſuch bill.

10. Concerning ſeamen in the merchants ſervice, it is enacted by the 2 *G.* 2. *c.* 36. that no maſter of a ſhip ſhall proceed on a voyage, without agreeing in writing with each mariner (apprentices excepted), to be ſigned by ſuch mariner, for wages; on pain of 5 *l.* for each mariner, on conviction before one juſtice by the oath of one witneſs, to be levied by diſtreſs; for want of diſtreſs, to be committed till paid. *ſ.* 1, 2. Concerning ſeamen in the merchants ſervice.

And if the mariner *deſerts* after he hath ſigned the agreement, he ſhall forfeit the wages due to him at the time of deſerting; and on application from the maſter, owner, or commander of the ſhip, ſuch juſtice may cauſe him to be apprehended, and if he ſhall refuſe to proceed on the voyage, without ſufficient reaſon to the ſatisfaction of the juſtice, the ſaid juſtice ſhall commit him to the houſe of correction, there to be kept to hard labour, not exceeding 30 days, nor leſs than 14 days. *ſ.* 3, 4.

And if any ſeaman abſent himſelf from his ſhip without leave, he ſhall forfeit for every day's abſence two days pay to *Greenwich* hoſpital, to be deducted by the maſter out of his wages; the ſame to be entered in a book, and ſigned by the maſter and two officers of the ſhip; and the ſame to be paid over to the officer who collects the 6 *d.* a month deducted out of ſeamens wages, for the ſaid hoſpital. *ſ.* 5, 9.

And if any ſeaman not entering into the king's ſervice, ſhall leave his ſhip before he hath a diſcharge in writing, he ſhall forfeit one month's pay, in like manner. *ſ.* 6.

And the maſter ſhall pay the ſeamens wages, if demanded, in 30 days after the ſhip is entered at the cuſtom houſe, or at the time of diſcharge, which ſhall firſt happen, deducting out of ſuch wages the aforeſaid forfeitures; on pain of 20 *s.* to ſuch ſeamen, to be recovered in like manner as his wages. *ſ.* 7.

Note; the law relating to the recovery of ſuch wages, ſo far as proviſion is made for the ſame by any act of parliament, is treated of under title Servants.

[The ſaid act of the 2 *G.* 2. *c.* 36. was at firſt but temporary, and continued from time to time; but by the

2 *G.* 3. *c.* 31. it is made perpetual, and extended to his majeſty's colonies in *America*; and the forfeitures there, to *Greenwich* hoſpital, are to be paid to ſuch perſon as the commiſſioners of the admiralty ſhall direct: the maſter deducting, and not paying the ſame in three months, ſhall forfeit treble value, to the ſaid hoſpital.]

Search warrant.

ALthough it is not unuſual for juſtices to grant general warrants, to ſearch all ſuſpected places for ſtolen goods, and there is a precedent in *Dalton* requiring the conſtable to ſearch *all ſuch ſuſpected places as he and the party complaining ſhall think convenient*; yet ſuch practice is generally condemned by the beſt authorities.

Thus lord *Hale*, in his pleas of the crown, ſays, a general warrant to ſearch for felons or ſtolen goods, is not good. *H. Pl.* 93.

Mr. *Hawkins* ſays, I do not find any good authority, that a juſtice can juſtify ſending a general warrant, to ſearch all ſuſpected houſes in general for ſtolen goods: becauſe ſuch warrant ſeems to be illegal in the very face of it; for it would be extremely hard, to leave it to the diſcretion of a common officer, to arreſt what perſons, and ſearch what houſes he thinks fit; and if a juſtice cannot legally grant a blank warrant for the arreſt of a ſingle perſon, leaving it to the party to fill up, ſurely he cannot grant ſuch a general warrant, which might have the effect of an hundred blank warrants. 2 *Haw.* 82, 84.

Again, lord *Hale*, in his hiſtory of the pleas of the crown, expreſſeth himſelf thus; I do take it, that a general warrant to ſearch in all ſuſpected places, is not good; but only to ſearch in ſuch particular places, where the party aſſigns before the juſtice his ſuſpicion, and the probable cauſe thereof: for thoſe warrants are judicial acts, and muſt be granted upon examination of the fact. 2 *H. H.* 150.

And therefore, he ſays, he takes it that thoſe general warrants dormant, which are many times made before any felony committed, are not juſtifiable, for it makes the party to be in effect the judge; and therefore ſearches made by pretence of ſuch general warrants, give no more power to the

the officer or party, than what they may do by law without them. 2 *H. H.* 150.

Likewiſe, upon a *bare ſurmiſe*, a juſtice cannot make a warrant to break any man's houſe, to ſearch for a felon, or for ſtolen goods; for the juſtices being created by act of parliament, have no ſuch authority granted to them by any act of parliament; and it would be full of inconvenience, that it ſhould be in the power of any juſtice of the peace, being a judge of record, upon a bare ſuggeſtion to break the houſe of any perſon, of what ſtate, quality, or degree ſoever, either in the day or night, upon ſuch ſurmiſes. 4 *Inſt.* 177.

But in caſe of a complaint, and oath made, of goods ſtolen, and that the party ſuſpects that goods are in ſuch a houſe, and ſhews the cauſe of his ſuſpicion; the juſtice may grant a warrant to ſearch in thoſe ſuſpected places mentioned in his warrant, and to attach the goods, and the party in whoſe cuſtody they are found, and bring them before him, or ſome other juſtice, to give an account how he came by them, and further to abide ſuch order as to law ſhall appertain. 2 *H. H.* 113, 150.

But in that caſe, lord *Hale* ſays, it is convenient that ſuch warrant do require the ſearch to be made in the day time; and though I will not affirm (ſays he) that they are unlawful without ſuch reſtriction, yet they are very inconvenient without; for many times, under pretence of ſearches made in the night, robberies and burglaries have been committed, and at beſt it creates great diſturbances. 2 *H. H.* 150.

But in caſe not of probable ſuſpicion only, but of poſitive proof, it is right to execute the warrant in the night time, leſt the offenders and goods alſo be gone before morning. *Barl.* Search War.

Furthermore, ſuch warrant ought to be directed to the conſtable, or other public officer, and not to any private perſon; though it is fit the party complaining ſhould be preſent and aſſiſtant, becauſe he knows his goods. 2 *H. H.* 150.

So much for *granting* a ſearch warrant; next touching the *execution* of it.

Whether the ſtolen goods are in a ſuſpected houſe or not, the officer and his aſſiſtants in the day time may enter, the doors being open, to make ſearch, and it is juſtifiable by this warrant. 2 *H. H.* 151.

If the door be ſhut, and upon demand it be refuſed to be opened by them within, if the ſtolen goods be in the houſe,

houſe, the officer may break open the door. 2 *H. H.* 151.

If the goods be not in the houſe, yet it ſeems the officer is excuſed that breaks open the door to ſearch, becauſe he ſearched by warrant, and could not know whether the goods were there, till ſearch made; but it ſeems the party that made the ſuggeſtion is puniſhable in ſuch caſe; for as to him the breaking of the door is *in eventu* lawful or unlawful, to wit, lawful if the goods are there, unlawful if not there. 2 *H. H.* 151.

On the *return* of the warrant executed, the juſtice hath theſe things to do:

As touching the *goods* brought before him, if it appear they were not ſtolen, they are to be reſtored to the poſſeſſor; if it appear they were ſtolen, they are not to be delivered to the proprietor, but depoſited in the hand of the ſheriff or conſtable, to the end the party robbed may proceed, by indicting and convicting the offender, to have reſtitution. 2 *H. H.* 151.

As touching the *party* that had the cuſtody of the goods; if they were not ſtolen, then he is to be diſcharged; if ſtolen, but not by him, but by another that ſold or delivered them to him, if it appear that he was ignorant that they were ſtolen, he may be diſcharged as an offender, and bound over to give evidence as a witneſs againſt him that ſold them; if it appear he was knowing they were ſtolen, he muſt be committed or bound over to anſwer the felony. 2 *H. H.* 152.

Form of a ſearch warrant.

Weſtmorland. { To the conſtable of ———.

WHEREAS *it appears to me* J. P. *eſquire, one of the juſtices of our lord the king, aſſigned to keep the peace in the ſaid county, by the information on oath of* A. I. *of* ——— *in the county aforeſaid, yeoman, that the following goods, to wit,* ——— *have within two days laſt paſt, by ſome perſon or perſons unknown, been feloniouſly taken, ſtolen, and carried away, out of the houſe of the ſaid* A. I. *at* —— *aforeſaid, in the county aforeſaid; and that the ſaid* A. I. *hath probable cauſe to ſuſpect, and doth ſuſpect, that the ſaid goods, or part thereof, are concealed in the dwelling houſe of* A. O. *of* —— *in the ſaid county, yeoman; Theſe are therefore, in the name of our ſaid lord the king, to authorize and require you, with neceſ-*

neceſſary and proper aſſiſtants, to enter in the day time into the ſaid dwelling houſe of the ſaid A. O. *at* ——— *aforeſaid, in the county aforeſaid, and there diligently to ſearch for the ſaid goods; and if the ſame, or any part thereof, ſhall be found upon ſuch ſearch, that you bring the goods ſo found, and alſo the body of the ſaid* A. O. *before me, or ſome other of the juſtices of our ſaid lord the king, aſſigned to keep the peace in the county aforeſaid, to be diſpoſed of and dealt withal according to law. Given under my hand and ſeal at* —— *in the ſaid county, the* —— *day of* ——— *in the* ——— *year of the reign of* ———.

Self defence. See Homicide.
Self murder. See Homicide.

Servants.

Under this title are alſo comprehended labourers, journeymen, artificers, and other workmen.

Concerning the *ſettlement* of ſervants, ſee title Poor.

I. Who may be compelled to ſerve, and for what term.
II. Rating of wages.
III. Time of working for labourers.
IV. Working in Harveſt.
V. Leaving work unfiniſhed.
VI. Teſtimonial.
VII. Servant fleeing into another ſhire.
VIII. Servant aſſaulting his maſter.
IX. How far the maſter is allowed to beat the ſervant.
X. How far the maſter may beat another in defence of his ſervant, or the ſervant in defence of his maſter.
XI. Servants firing houſes.

XII. Ser-

XII. Servant ſtealing his maſter's goods.

XIII. Diſputes between ſilk maſters and their workmen.

XIV. Diſputes between clothiers and their workmen, by divers ſtatutes.

XV. Diſputes between maſters and ſervants in the woollen, linen, fuſtian, cotton, and iron manufactures; by the 1 An. ſt. 2. c. 18. & 13 G. 2. c. 8.

XVI. Diſputes between maſters and their workmen, in the leathern manufactures; by the 13 G. 2. c. 8.

XVII. Diſputes between maſters and their workmen, in the making of hats, or in the woollen, linen, fuſtian, cotton, iron, leather furr, hemp, flax, mohair, or ſilken manufactures; by the 22 G. 2. c. 27.

XVIII. Diſputes between maſters and their workmen, in the manufactures of clocks and watches; by the 27 G. 2. c. 7.

XIX. Diſputes between maſters and ſervants in huſbandry, artificers, handicraftſmen, miners, colliers, keelmen, pitmen, glaſſmen, potters, and other labourers; by the 20 G. 2. c. 19. & 6 G. 3. c. 25.

XX. Shipmaſters and their ſeamen.

XXI. Taylors and their workmen within the bills.

XXII. Shoemakers and their workmen within the bills.

XXIII. How far the maſter is anſwerable for the ſervant.

I. Who may be compelled to ſerve, and for what term.

1. NO perſon ſhall retain, or be retained, to work for any leſs term than one whole year, in any of the crafts of clothiers, woollen cloth weavers, tuckers, fullers, clothworkers, ſhearmen, dyers, hoſiers, taylors, ſhoemakers, tanners, pewterers, bakers, brewers, glovers, cutlers, ſmiths, farriers, curriers, ſadlers, ſpurriers, turners, cappers, hatmakers, or feltmakers, bowyers, fletchers, arrow-head makers, butchers, cooks, or millers. 5 *El. c.* 4. *ſ.* 3. Who compellable to ſerve in trades.

And every perſon unmarried, and every married perſon being under the age of 30 years, and having been brought up in any of the ſaid trades, or that hath uſed any of them by the ſpace of three years or more; and not having an eſtate of inheritance or for life of 40*s.* a year, nor worth 10*l.* in goods, and ſo allowed by two juſtices of the county where he hath moſt commonly inhabited for one year, under their hands and ſeals, or by the mayor of a town corporate and two aldermen, or (if there are no aldermen) two diſcreet burgeſſes; nor being retained with any perſon in huſbandry, nor in any of the aforeſaid trades; nor being lawfully retained in houſhold, or in any office with any nobleman, gentleman, or other according to law; nor having a convenient farm or other holding in tillage;—ſhall during the time that he ſhall be ſo unmarried, or under the ſaid age of 30 years, on requeſt made by any perſon uſing the art and myſtery wherein the ſaid perſon hath been exerciſed, be retained and ſerve, on pain as hereafter followeth. *ſ.* 11.

And no perſon which ſhall retain any ſervant, ſhall put away his ſaid ſervant, and no perſon retained according to this ſtatute ſhall depart before the end of his term, unleſs it be for ſome reaſonable cauſe, to be allowed before one juſtice or mayor to whom the party grieved ſhall complain: And no maſter ſhall put away any ſuch ſervant at the end of his term, nor ſhall any ſuch ſervant depart at the end of his term without one quarter's warning, on pain hereafter enſuing. *ſ.* 5, 6.

2. Every perſon between the age of 12 and 60, not being lawfully retained, nor apprentice with any fiſherman or mariner haunting the ſeas; nor being in ſervice with any kidder or carrier of corn, grain, or meal for proviſion of the city of *London*; nor with any huſbandman in huſbandry; nor in any city, town corporate, or market town, in any of the arts limited by this ſtatute to have apprentices; not being retained In huſbandry.

retained by the year, or half year at leaſt; for getting, melting, fining, working, trying, making of any ſilver, tin, lead, iron, copper, ſtone, ſea coal, ſtone coal, moor coal, or cherk coal; nor being occupied in the making of glaſs; nor being a gentleman born, nor being a ſtudent or ſcholar in any of the univerſities, or ſchool; nor having an eſtate of inheritance, or for term of life, of 40*s.* a year; nor worth 10*l.* in goods; nor having a father and mother then living, or other anceſtors, whoſe heir apparent he is, having lands of 10*l.* a year, or goods worth 40*l.*; nor being a neceſſary or convenient officer or ſervant lawfully retained as aforeſaid; nor having a convenient farm or holding, whereon to emply his labour; nor being otherwiſe lawfully retained according to the true meaning of this ſtatute,——ſhall be compelled to be retained to ſerve in huſbandry by the year, with any perſon that keepeth huſbandry, and will require any ſuch perſon ſo to ſerve, within the ſame ſhire where he ſhall be ſo required. 5 *El. c.* 4. *ſ.* 7.

And if any perſon, after he hath retained any ſervant, ſhall put him away before the end of his term, unleſs it be for ſome reaſonable cauſe, to be allowed as is aforeſaid; or ſhall put him away at the end of his term, without a quarter's warning; unleſs he can prove by two witneſſes ſuch reaſonable cauſe, or ſuch quarter's warning, before the judges of aſſize, juſtices of the peace in ſeſſions, or the mayor and two aldermen (or two diſcreet burgeſſes if there are no aldermen) in corporations,—he ſhall forfeit 40*s.* *ſ.* 8.

Penalties. 3. And if any ſervant retained according to this ſtatute ſhall depart from his ſervice before the end of his term, unleſs it be for ſome reaſonable cauſe to be allowed as aforeſaid, or at the end of his term depart with out a quarter's warning before two witneſſes; or if any perſon bound to ſerve in huſbandry or other arts above remembered, by the year or otherwiſe, do on requeſt refuſe to ſerve for the wages to be limited by this ſtatute; or promiſe to ſerve, and do not ſerve, ——— then, on complaint and conviction before two juſtices, or mayor and two aldermen (or two diſcreet burgeſſes where there are no aldermen) he ſhall be committed to ward until he ſhall be bound to ſerve and continue for the wages that ſhall be then limited; and to be diſcharged upon his delivery, without any fee to the gaoler. 5 *El. c.* 4. *ſ.* 9.

And the forfeitures not otherwiſe appointed by this act, ſhall be half to the king, and half to him that ſhall ſue in

any of the king's courts of record, or before the juſtices of oyer and terminer, or before any other juſtice before remembered; and the ſaid juſtices, or two of them (1 *Q.*) and the ſaid mayors or other head officers, ſhall have power to hear and determine all offences againſt this ſtatute, as well upon indictment in the ſeſſions of the peace, as upon information, action of debt, or bill of complaint; and ſhall yearly in *Michaelmas* term eſtreat the forfeitures into the exchequer, in like manner as other eſtreats. *ſ.* 39.

And all fines and forfeitures which ſhall ariſe by reaſon of any offences in this act, within any city or town corporate, ſhall be levied by ſuch perſon as ſhall be appointed by the mayor or other head officer, to the uſe of the ſame city or town corporate, as other fines and forfeitures by the charter. *ſ.* 45.

4. Two juſtices (or the mayor or other head officer of a town corporate, and two aldermen, or two diſcreet burgeſſes if there be no aldermen) may appoint any ſuch woman as is of the age of 12 years, and under 40, and unmarried, and forth of ſervice, as they ſhall think meet, to ſerve, or be retained to ſerve by the year, or by the week or day, for ſuch wages, and in ſuch reaſonable ſort and manner as they ſhall think meet; and if any ſuch women ſhall refuſe ſo to ſerve, they may commit her to ward, until ſhe ſhall be bounden to ſerve as is aforeſaid. 5 *El. c.* 4. *ſ.* 24. Women compellable to ſerve.

And if a woman who is a ſervant ſhall marry, yet ſhe muſt ſerve out her time, and her huſband cannot take her out of her maſter's ſervice. *Dalt. c.* 58. *Wood b.* 1. *c.* 6.

5. If a perſon retain a ſervant generally, without expreſſing any time, the law ſhall conſtrue it to be for one year, for that retainer is according to law. 2 *Inſt.* 42. Retainer to be for a year.

And if a man retaineth another, except the retainer be according to the ſtatute, it ſeemeth to be void; unleſs it be by indenture, and then being by deed, he is bound by his covenant. *Dalt. Old Ed. c.* 31.

6. By the retainer, the ſervant is in ſervice preſently by the law, although he cometh not into his maſter's ſervice in deed. *Dalt. c.* 58. Retainer is the beginning of ſervice.

7. If a ſervant be within age, his agreement with his maſter to his diſadvantage ſhall not prejudice him. *Dalt. c.* 58. Infant hiring.

8. If a married man and his wife do bind themſelves to ſerve, they ſhall be compelled to ſerve according to their covenant or agreement. *Dalt. c.* 58. Married perſon hiring.

9. If

Servant falling ſick.

9. If a ſervant retained for a year, happen within the time of his ſervice to fall ſick, or to be hurt or diſabled by the act of God, or in doing his maſter's buſineſs; yet the maſter muſt not therefore put ſuch ſervant away, nor abate any part of his wages for ſuch time. *Dalt. c.* 58.

II. Rating of wages.

Rating wages.

1. The juſtices of every ſhire, riding, and liberty, or the more part of them, being then reſiant within the ſame, and the ſheriff if he conveniently may, and every mayor and other head officer within any city or town corporate, wherein is any juſtice of the peace within the limits of the ſaid city or town corporate, and of the ſaid corporation, ſhall yearly in *Eaſter* ſeſſions, or within ſix weeks next after, aſſemble, and call unto them ſuch diſcreet and grave perſons as they ſhall think meet, and having reſpect to the plenty or ſcarcity of the time, and other circumſtances, ſhall have authority to limit, rate, and appoint the wages, as well of ſuch the ſaid artificers, handicraftſmen, huſbandmen, or any other labourer, ſervant, or workman, whoſe wages in times paſt have been by any law or ſtatute rated and appointed, as alſo the wages of all other labourers, artificers, workmen, or apprentices of huſbandry, which have not been rated, as they ſhall think meet by their diſcretions, to be rated, limited, or appointed by the year, or by the day, week, month, or otherwiſe, with meat and drink, or without meat and drink, and what wages every workman or labourer ſhall take by the great, for mowing, reaping, or threſhing of corn and grain, or for mowing or making of hay, or for ditching, paving, railing, or hedging, by the rod, perch, lugg, yard, pole, rope, or foot, and for any other kind of reaſonable labour or ſervice. 5 *El. c.* 4. *ſ.* 15.

And by the 1 *J. c.* 6. The juſtices, or the more part of them, reſiant in any riding, liberty or diviſion, where the ſeſſions are ſeverally kept, ſhall have power to rate the wages within ſuch diviſion, as if the ſame were done in the general ſeſſions for the county. *ſ.* 5.

And by the ſame ſtatute of 1 *J. c.* 6. The ſaid act of 5 *El.* ſhall extend to the rating of wages of all labourers, weavers, ſpinſters, and workmen or workwomen whatſoever, either working by the day, week, month, year, or taking any work by the great or otherwiſe. *ſ.* 3.

But

But no clothier being a juſtice of the peace in any precinct or liberty, ſhall be a rater of wages for the making of cloth; and if there be not above two juſtices in ſuch precinct, but ſuch as are clothiers, the wages ſhall be rated by the major part of the common council of ſuch precinct, and ſuch juſtices (if any there be) as are not clothiers. *id. ſ.* 9.

And if any juſtice reſiant within the county, or mayor, ſhall be abſent at the rating of wages, and not hindered by ſickneſs or other lawful cauſe, to be allowed by the juſtices then aſſembled for rating of wages, upon the oath and affidavit of ſome credible perſon, he ſhall forfeit to the king 10*l.* to be recovered in the ſeſſions or other court of record, by indictment or otherwiſe. 5 *El. c.* 4. *ſ.* 17.

And the juſtices ſhall yearly, between *Sept.* 29, and *Dec.* 25, and between *March* 25, and *June* 24, make ſpecial and diligent enquiry of the good execution of this ſtatute, and puniſh defaulters; and ſhall have for every day that they ſit about the execution thereof (not exceeding three days at a time) 5*s.* each, out of the forfeitures due to the king. *ſ.* 37, 38.

Rates to be proclaimed.

2. By the aforeſaid act of 5 *El.* the rates were to be certified into the chancery; but by the 1 *J. c.* 6. they need not to be certified into the chancery, but ſhall be kept amongſt the records of the county or town corporate. *ſ.* 8.

And after the ſaid rates are made and ingroſſed in parchment under the hands and ſeals of the perſons having authority to rate the ſame, the ſheriff, or mayor, may cauſe proclamation thereof to be made, in ſo many places as to them ſhall ſeem convenient, and every perſon ſhall be bound to obſerve the ſame. *id. ſ.* 6.

Giving more than is rated.

3. If any perſon upon the proclamation publiſhed, ſhall directly or indirectly retain or keep any ſervant, workman, or labourer, or ſhall give any more or greater wages, or other commodity, than ſhall be ſo appointed in the ſaid proclamation; he ſhall on conviction before any of the juſtices or other head officers above remembered, be impriſoned for ten days without bail, and ſhall forfeit 5*l.* half to the king, and half to him that ſhall ſue before the ſaid juſtices in their ſeſſions. 5 *El. c.* 4. *ſ.* 18.

But yet maſters may reward a well deſerving ſervant, over and above his wages, according as he ſhall deſerve, ſo it be not by way of promiſe or agreement upon his retainer. *Dalt. c.* 58.

Taking more.

4. And every perſon that ſhall be ſo retained and take wages contrary to the ſaid ſtatute of the 5 *El.* or to the ſaid proclamation, and ſhall be thereof convicted before the juſtices aforeſaid, or any two of them, or before the mayor or other head officers aforeſaid, he ſhall be impriſoned for 21 days without bail. 5 *El. c.* 4. *ſ.* 19.

Contract to the contrary, void.

5. And every retainer, promiſe, gift, or payment of wages, or other thing, contrary to the ſaid act, and every writing and bond to be made for that purpoſe, ſhall be void. 5 *El. c.* 4. *ſ.* 20.

Paying leſs than is rated.

6. If any clothier, or other, ſhall refuſe to pay ſo much wages to their weavers, ſpinſters, workmen, or workwomen, as ſhall be rated; and be convicted thereof by confeſſion, or oath of two witneſſes, at the aſſizes, or ſeſſions, or before any two juſtices (1 *Q.*); he ſhall forfeit 10*s.* to the party grieved, to be levied by diſtreſs and ſale. 1 *J. c.* 6. *ſ.* 7.

Ordering the payment of wages.

7. *M.* 1 *An. Q.* and *Gouche.* An order was made by the juſtices for payment of wages, for work and labour in huſbandry: The exception was, That it did not appear to be ſtatute wages, and ſuch only are within their juriſdiction. By the court: Though the ſtatute gives them a power only to ſet the rate for wages, and not to order payment; yet grafting hereupon, they have alſo taken upon them to order payment, and the courts of law are indulgent in remedies for wages, and therefore they would intend it ſuch wages as were within the ſtatute, unleſs the contrary appear upon the face of the order. 2 *Salk.* 441.

And in the caſe of *K.* and *Gregory*, 2 *Salk.* 484. There was an order to pay 40*s.* for wages generally; and becauſe it was not ſaid for wages in husbandry, it was moved to quaſh it, for that the juſtices can only ſettle wages in huſbandry: But by the court; We will intend it for ſuch wages, ſince the contrary do not appear.

But in the caſe of *K.* and *Helling*, *M.* 3 *G.* There was an indictment for not paying ſervant's wages, reciting an order of two juſtices, whereby it appeared, that 9*l.* was due, which the defendant refuſed to pay, having had notice of the order. It was moved to quaſh the indictment, becauſe it doth not ſet out the labour of the ſervant, and is only generally for wages; the juſtices have only juriſdiction in caſes of husbandry; and the order ought to ſhew, that this was a matter within their juriſdiction. By *Eyre* J. the practice is, if an order be for paying wages, it is ſuppoſed to be ſuch as the juſtices have power over. But *Parker* Ch. J. and *Pratt* J. were of another opinion. And

in

in the next term following the indictment was quashed. *Str.* 8.

And in the case of *K.* and *Clegg*, *M.* 8. *G.* It was said by *Fortescue* J. that in the case of servants wages, although jurisdiction is given only in husbandry, yet orders have been held good, where it did not appear that the service was in husbandry; for the court said they would intend it so, unless the contrary appeared. But by *Pratt* Ch. J. This was always wondered at, and in my lord *Parker*'s time it was actually contradicted in the case of *K.* and *Helling*. Str. 475.

In *Bycraft*'s case, 5 *Mod.* 140. A justice made an order for payment of a *seaman*'s wages; but in action brought against him, the plaintiff recovered 30 *l.* damages.

M. 8 *An. Q.* and *Cecill*. An order upon a master to pay wages in husbandry, was quashed, because it was made upon the servant's oath, which is against law, and no power given in the statute to admit such oath as evidence. L. *Raym.* 1305.

But by other statutes hereafter following, such oath is allowed as evidence; but upon this statute it was not necessary, because in order to intitle the servant to wages, he needed not to prove how much his master had agreed to pay him, for that was fixed by the justices, but only how long he had served, and then the wages followed of course; and this might be proved by many others as well as by himself.

III. The time of working for labourers.

All artificers and labourers, being hired for wages, by the day, or week, shall, betwixt the midst of *March* and *September*, be and continue at their work, from five in the morning till after seven at night (except in the time of breakfast, dinner, or drinking, which shall not exceed two hours and a half in a day, that is to say, at every drinking one half hour, for his dinner one hour, and for his sleep, when he is allowed to sleep, that is, from the midst of *May* to the midst of *August*, half an hour at the most, and at every breakfast one half hour:) And all the said artificers and labourers, between the midst of *September* and the midst of *March*, shall be and continue at their work, from the spring of the day in the morning, until night, except it be in the time before appointed for breakfast and dinner; on pain to forfeit 1 *d.* for every hour's absence, to be deducted out of his wages. 5 *El. c.* 4. *s.* 12.

VI. Working in harveſt.

1. In the time of hay or corn harveſt, the juſtices of the peace, and every of them, and alſo the conſtable or other head officer of every townſhip, upon requeſt, and for avoiding of the loſs of any corn, grain or hay, ſhall cauſe all ſuch artificers and perſons as be meet to labour, by the diſcretions of the ſaid juſtices or conſtables, or other head officers, or by any of them, to ſerve by the day, for the mowing, reaping, ſhearing, getting, or inning of corn, grain, and hay, according to the ſkill and quality of the perſon; and that none of the ſaid perſons ſhall refuſe to do, on pain to ſuffer impriſonment in the ſtocks, by the ſpace of two days and one night: And the conſtable of the town, or other head officer, on complaint to him made, ſhall ſet him in the ſtocks accordingly, on pain of 40*s.* half to the king, and half to him that ſhall ſue in the ſeſſions, or other court of record; and if it is in a town corporate, then to the uſe of ſuch town, as other fines by the charter. 5 *El. c.* 4. *ſ.* 22.

Provided, that all perſons of the counties where they have accuſtomed to go into other ſhires for harveſt work, and having at that time no harveſt work ſufficient in the ſame town or county where they dwelt in the winter laſt paſt, bringing with them a teſtimonial under the hand and ſeal of one juſtice of the ſhire, or other head officer of the town or place that they come from, teſtifying the ſame, for which he ſhall pay not above 1 *d.* (other than ſuch perſons as ſhall be retained in ſervice) may repair in harveſt of hay or corn, into any other county or place for the only mowing, reaping, and getting of hay, corn, or grain, and for the only working of harveſt work, as they might have done before the making of this act. *ſ.* 23.

2. And by the 13 & 14 *C.* 2. *c.* 12. A perſon may go abroad to work in harveſt, carrying with him a certificate from the miniſter and one churchwarden or overſeer, that he hath a dwelling houſe or place in which he inhabits, and hath left wife and children, or ſome of them there (or otherwiſe as his condition ſhall require) and declaring him an inhabitant there. *ſ.* 3.

And by the vagrant act of the 17 *G.* 2. Perſons carrying with them ſuch certificate, ſhall not be liable to be apprehended as vagrants.

V. Leaving work unfiniſhed.

Every artificer and labourer, that ſhall be lawfully retained in and for the building or repairing of any church, houſe, ſhip, mill, or other piece of work taken in great, in taſk, or in groſs, or that ſhall take upon him to make or finiſh any ſuch work, ſhall continue and not depart from the ſame, unleſs it be for not paying his wages or hire agreed on, or otherwiſe lawfully taken or appointed to ſerve the king, or for other lawful cauſe, or without licence of the maſter or owner of the work, or of him that hath the charge thereof, before the finiſhing of the ſaid work, on pain of impriſonment for a month without bail or mainprize, and the forfeiture of 5*l.* to the party from whom he ſhall ſo depart, for the which the ſaid party may have his action of debt in any of the king's courts of record, over and beſides ſuch ordinary coſts and damages as may or ought to be recovered by the common laws, for ſuch offence. 5 *El. c.* 4. *ſ.* 13.

And no other artificer or labourer, retained in any ſervice, to work for the king, or any other perſon, ſhall depart from his ſaid majeſty, or from ſuch other perſon, until the work be finiſhed, if the perſon ſo retaining the artificer or labourer ſo long will have him, and pay him his wages; on pain of impriſonment for one month. *ſ.* 14.

VI. Teſtimonial.

None of the ſaid perſons retained in husbandry, or in any the arts above remembered, after the time of his retainer expired, ſhall depart forth of one city, town, or pariſh to another; nor out of the lathe, rape, wapentake, or hundred; nor out of the county where he laſt ſerved, to ſerve in any other city, town corporate, lathe, rape, wapentake, hundred, or county; unleſs he have a teſtimonial under the ſeal of the ſaid city or town corporate, or of the conſtable or other head officer, and of two other honeſt houſeholders of the city, town, or pariſh, where he laſt ſerved: Which teſtimonial ſhall be in this form:

Memorandum, That A. B. *late ſervant to* C. D. *of* E. *huſbandmen, or taylor,* &c. *in the ſaid county, is licenſed to depart from his ſaid maſter, and is at his liberty to ſerve elſewhere, according to the ſtatute in that caſe made and provided.*

In witneſs whereof, &c. *Dated the day, month, year, and place*, &c. *of the making thereof:*

Which teſtimonial ſhall be delivered to the ſaid ſervant, and alſo regiſtered by the miniſter of the pariſh where the maſter dwells, taking 2*d.* for the ſame. 5 *El. c.* 4. *ſ.* 10.

And no perſon that ſhall depart out of a ſervice, ſhall be retained or accepted into any other ſervice, without ſhewing (before his retainer) ſuch teſtimonial, to the chief officer of the town corporate, and in every other town and place, to the conſtable, curate, churchwarden, or other head officer; on pain that every ſuch ſervant ſo departing without ſuch teſtimonial, ſhall be impriſoned till he procure one; which if he cannot do in 21 days, he ſhall be whipped and uſed as a vagabond, according to the laws in ſuch caſe provided; and every perſon retaining ſuch ſervant, without ſhewing ſuch teſtimonial, ſhall forfeit 5*l.* half to the king, and half to him that ſhall ſue in the ſeſſions or other court of record; and if any ſuch perſon be taken with a counterfeit teſtimonial, then to be whipped as a vagabond. *ſ.* 11.

By the common law, if a man retained another man's ſervant, not knowing that he was retained with him, this ignorance excuſed him of the offence; but now the maſter may, and muſt take notice, whether he hath a teſtimonial or no; otherwiſe, if he hath no teſtimonial, ſuch maſter is liable by this ſtatute to the penalty of 5*l.* *Dr. & St.* 149.

VII. Servant fleeing in another ſhire.

If any ſervant of husbandry, or of any art, ſcience, or occupation aforeſaid, flee into another ſhire, it ſhall be lawful for the juſtices of the peace, and the ſaid mayors or other head officers being juſtices of the peace, to iſſue writs of *capias*, directed to the ſheriffs of the counties, or other head officers of the places whether he ſhall flee, to take his body, returnable before them at what time ſhall pleaſe them; ſo that if they come by ſuch proceſs, they be put in priſon till they ſhall find ſufficient ſurety well and honeſtly to ſerve their maſters. 5 *El. c.* 4. *ſ.* 47.

And by the 24 *G.* 2. *c.* 55. If a juſtice ſhall iſſue a warrant againſt ſuch perſon, and he ſhall eſcape into another ſhire; the conſtable or other perſon, on having the warrant indorſed by a juſtice in ſuch other ſhire, may arreſt him there, and carry him before a juſtice in ſuch other ſhire, if the offence is bailable, to find bail, or elſe ſhall carry him back before a juſtice in the ſhire from whence the warrant did firſt iſſue.

VIII. Servant

VIII. Servant aſſaulting his maſter.

If any ſervant, workman, or labourer, ſhall willfully or maliciouſly make an aſſault or affray upon his maſter or miſtreſs, or upon any other having charge or overſight of ſuch ſervant or labourer, or over the work wherein he is hired to work, and ſhall be thereof convicted before any two juſtices, or other head officer aforeſaid, by confeſſion, or oath of two witneſſes, he ſhall be impriſoned for a year, or leſs, by the diſcretion of two juſtices out of a town corporate, and in a town corporate of the mayor or other head officer with two others of the diſcreeteſt perſons of the ſame corporation: And if the offence ſhall require further puniſhment, then to receive ſuch other open puniſhment ſo as it extend not to life or limb, as the juſtices in ſeſſions, or the mayor or other head officer, and ſix or four at leaſt of the diſcreeteſt perſons of the corporation, ſhall think convenient for the quality of the offence. 5 *El. c.* 4. *ſ.* 21.

IX. How far the Maſter is allowed to beat his ſervant.

The maſter is allowed by law, with moderation to chaſtiſe his ſervant. *Dalt. c.* 58.

And where a maſter in correcting his ſervant, happens to occaſion his death, it ſhall be deemed homicide by miſadventure; yet if in his correction he be ſo barbarous, as to exceed all bounds of moderation, and thereby occaſion the ſervant's death, it is manſlaughter at leaſt; and if he make uſe of an inſtrument improper for correction, and apparently endangering the ſervant's life, as an iron bar, or ſword, or kick him to the ground, and then ſtamp on his belly, and kill him, it is murder. 1 *Haw.* 73, 74.

And if the ſervant ſhall depart out of his maſter's ſervice, and the maſter happen after to lay hold of him, yet the maſter in this caſe may not beat or forcibly compel his ſaid ſervant againſt his will to return or tarry with him, or do his ſervice; but either he muſt complain to the juſtices, for his ſervant's departure, or he may have an action of covenant againſt his ſervant. *Dalt. c.* 121.

X. How far the maſter may beat another in defence of his ſervant, or the ſervant in defence of his maſter.

According to ſome opinions, a maſter ſhall not forfeit a recognizance of the peace, for beating another in defence of his ſervant, nor the ſervant for beating another in defence of his maſter. 1 *Haw.* 131.

But in the caſe of *Leeward* and *Baſilee*, *M.* 7 *W.* It was held by the court, that a ſervant may juſtify an aſſault in defence of his maſter, but not a maſter in defence of his ſervant; becauſe he might have an action for the loſs of his ſervice. 1 *Salk.* 407.

XI. Servants firing houſes.

If any menial or other ſervant, through negligence or careleſſneſs ſhall fire or cauſe to be fired any dwelling houſe or out houſe, and be convicted thereof by oath of one witneſs, before two juſtices, he ſhall forfeit 100*l.* to the churchwardens, to be diſtributed amongſt the ſufferers by ſuch fire; and if he ſhall not pay the ſame immediately, on demand of the churchwardens, he ſhall be committed by the ſaid juſtices to ſome workhouſe or houſe of correction for 18 months, there to be kept to hard labour. 6 *An. c.* 31. *ſ.* 3.

XII. Servant ſtealing his maſter's goods.

By the 21 H. 8. c. 7. *If any ſervant to whom any goods ſhall by his maſter or miſtreſs be delivered to be kept, ſhall go away therewith, to the intent to ſteal the ſame; or, being in his maſter or miſtreſs's ſervice, without his or her aſſent, ſhall imbezzle or otherwiſe convert the ſame to his own uſe, with like purpoſe to ſteal it, if the ſame be of the value of* 40 s. *or above, he ſhall be guilty of felony: but this not to extend to any apprentice, or any perſon within the age of* 18 *years.*

By his maſter or miſtreſs] If the maſter's wife deliver goods of the maſter, to the ſervant to keep, and he goes away with them, it ſeems this is within the ſtatute, for he hath them by delivery of his miſtreſs; and the maſter's wife

wife is as well his miſtreſs, as if ſhe were ſole. 1 *H. H.* 668.

Be delivered to be kept] This ſtatute was introductive of a new law, when the goods were actually *delivered* to the ſervant that goes away with them; for where there is ſuch a delivery, it could not at the common law be a felony. 1 *H. H.* 667.

But yet a ſervant may be guilty of felony at common law, if he *take* the goods of his maſter feloniouſly, nay, tho' they be goods under his charge, as a ſhepherd, butler, and the like; and for this he may be indicted at this day as a felon at common law: and of this ſelony at common law an apprentice, or ſervant under the age of 18 years, may be guilty, and indicted thereof at common law. 1 *H. H.* 667.

And therefore tho' this ſtatute exempt an apprentice or ſervant under 18, from the pain of felony enacted *de novo* by this ſtatute, namely, where goods are actually delivered to him, yet it leaves him in the ſame condition as to any felony at common law, as if he were not accepted; and therefore if a butler or ſhepherd, under the age of 18 years, or if an apprentice take away his maſter's goods feloniouſly, without an actual delivery, tho' they are under the value of 40 *s.* he is indictable of felony at common law. 1 *H. H.* 667, 668.

If a man delivers to his ſervant the key of his chamber door, and the ſervant taketh away his maſter's goods in the chamber (above the value of 12 *d.*) this is not felony upon the ſtatute, but at the common law, for the *goods* were not delivered. *Dalt. c.* 155.

If a man appoints his ſervant to take and carry corn to market, and to take his horſe to carry the ſame upon, and the ſervant goeth away with the corn or horſe; this is felony in the ſervant, if the goods he ſo goeth away with, be all to the value of 40 *s.* *Dalt. c.* 155.

But if the maſter waſtefully conſumeth the goods, and returneth again to his maſter, this is no felony. *Dalt. c.* 155.

If the maſter deliver an obligation to his ſervant, to receive the money thereby due, and the ſervant receive the money, and goeth away with the ſame, with intent to ſteal it; this is no offence within the ſtatute, becauſe he had not the money of the delivery of his maſter. 3 *Inſt.* 105.

So if the maſter deliver to his ſervant wares or merchandizes to ſell, and he ſelleth the ſame, and goeth away with the

the money as before, this is no offence within this ſtatute, for the cauſe aforeſaid.

So if the ſervant receiveth above 40 *s.* of his maſter's rents, and run away therewith, it is no felony; for the ſtatute is, where the maſter delivereth it to keep. *Dalt. c.* 155.

But it is held, that if the maſter deliver to the ſervant 20 *l.* in ſilver, to change it into gold at the goldſmith's, or leather to make ſhoes, and he run away with the gold or ſhoes, it is felony. 1 *H. H.* 668.

Shall be guilty of felony] but not without benefit of clergy. But by the 12 *An. ſt.* 1. *c.* 7. Every perſon who ſhall ſteal goods to the value of 40 *s.* out of any dwelling houſe, altho' it be not broken open, ſhall be guilty of felony without benefit of clergy: But this not to extend to apprentices under 15 years of age.

And in *Joſhua Cornwall*'s caſe, *M.* 4 *G.* 2. it was adjudged, that a ſervant may be guilty of burglary with reſpect to his maſter's goods, altho' he did not break and enter, nor take, nor carry the goods away. Which was thus: the ſervant in the night opened the ſtreet-door; and let in the thief, and ſhewed him the ſide board, from whence he took the plate; then the ſervant opened the door, and let him out, but did not go out with him, but went to bed. Upon the trial it was doubted, whether this was burglary in the ſervant, he not going out with the other; wherefore it was ordered to be found ſpecially. And afterwards at a meeting of all the judges at *Serjeants Inn*, they were all of opinion that it was burglary in both. And upon report of this opinion the next ſeſſions, the defendant was executed. *Str.* 881.

XIII. Diſputes between ſilk maſters and their workmen.

1. By the 13 & 14 *C.* 2. *c.* 15. Every ſilk winder and doubler, who ſhall unjuſtly, or deceitfully and falſely purloin, imbezzle, pawn, ſell, or detain any part of ſilk delivered to them to wind or double, in every ſuch caſe, as well the winder or journeyman ſo offending, as the buyer and receiver thereof, being lawfully convicted, by confeſſion, or oath of one witneſs, before one juſtice (or mayor) ſhall render to the party grieved ſuch ſatisfaction for his damage and loſs and charges, as the juſtice ſhall order. *ſ.* 6.

But no more damages ſhall be given, than the party grieved ſhall prove he is damnified, and hath expended; and if the party ſhall not be able, or do not make recompence in 14 days after conviction, he ſhall for the firſt offence be apprehended and whipped, or ſet in the ſtocks where the offence was committed, or in ſome market town near, in the ſaid county; and for the ſecond offence, to incur the like, or ſuch further puniſhment by whipping or being put in the ſtocks, as ſuch juſtice ſhall think convenient. *ſ.* 7.

2. And by the 20 *C.* 2. *c.* 6. If any ſilk winder or doubler ſhall be found faulty, in unjuſtly, deceitfully, or falſely purloining, imbezzling, pawning, ſelling, or detaining any ſilk committed to his truſt; any juſtice, or mayor, ſhall immediately on conviction by confeſſion, or oath of one witneſs, commit him to priſon or to the houſe of correction, till ſatisfaction be given to the party wronged, or puniſhment inflicted as by the 13 & 14 *C.* 2. is appointed.

3. And by the 8 & 9 *W.* *c.* 36. Every perſon that ſhall imbezzle, pawn, ſell, or detain any ſilk delivered to him to be wrought, or after it is wrought up, and alſo the receiver and buyer thereof, or ſuch as take the ſame to pawn, ſhall be ſubject to all the penalties of the 13 & 14 *C.* 2. *c.* 15. and the 20 *C.* 2. *c.* 6.

4. And by the 6 *G.* 3. *c.* 28. If any perſon ſhall, by day or night, break or enter by force into any houſe or ſhop, with intent to cut or deſtroy any velvet, wrought ſilk, or ſilk mixed with any other materials, or other ſilk manufacture, in the loom, or any warp or ſhute, tools, tackle, or utenſils; or ſhall wilfully and maliciouſly cut, break or deſtroy the ſame; he ſhall be guilty of felony without benefit of clergy. *ſ.* 15.

XIV. Diſputes between clothiers and their workmen, by divers ſtatutes.

1. By the 4 *Ed.* 4. *c.* 1. Clothmakers ſhall pay to the carders, and ſpinſters, and other labourers, their wages in money and not in goods, and deliver wool to them to be wrought according to the due weight thereof; on pain of forfeiting treble value of the wages, and for every delivery of exceſſive weight 6 *d.* *ſ.* 5.

And every carder, ſpinſter, weaver, fuller, ſhearman, and dyer, ſhall duly perform his duty in his occupation, on pain of double damages to the party grieved. *ſ.* 6.

And

And every juſtice of the peace, mayor, maſter, warden, bailiff, portreeve, conſtable of hundred, and ſteward of the leet, may hear and determine the ſame, and commit the offender to the next gaol, till the ſaid duties, forfeitures, and damages be paid. And any perſon not grieved may inform; in which caſe the offender ſhall forfeit to the king, or to ſuch perſon as ſhall be intitled to fines or amerciaments, 3 *s.* 4 *d.* And they may grant like proceſs, as juſtices of the peace may do for ſurety of the peace, without any fee to be taken for the execution of their offices in this behalf. *ſ.* 6.

2. By the 7 *J. c.* 7. Every ſorter, carder, kember, ſpinſter, and weaver, who ſhall unjuſtly, falſely, or deceitfully convey, imbezzle, purloin, ſell, or detain any part of the wool or yarn delivered by any clothier, maker of bays, ſays, or by any other perſon making ſuch cloths or ſtuffs, and alſo the buyer and receiver thereof, knowing the ſame, being thereof convicted by confeſſion, or oath of one witneſs, before two juſtices, or before the mayor and one of the aldermen or moſt ſubſtantial perſons of a town corporate, ſhall make ſuch ſatisfaction for damages, as the ſaid juſtices or chief officers ſhall appoint; and if the offender ſhall not by them be thought ſufficient, or do not make ſuch ſatisfaction, he ſhall for the firſt offence be apprehended and whipped, or ſet in the ſtocks where the offence is committed, or in ſome market town near in the ſame county; and for the ſecond offence, ſhall incur the like or ſuch further puniſhment by whipping, or being put in the ſtocks, as the ſaid juſtices or chief officers ſhall think convenient. *ſ.* 2.

And every ſpinner that ſhall receive any wool to be ſpun into yarn, for any clothier dwelling in *Cogſhall*, *Bocking*, *Braintree*, *Halſteed*, *Wittam*, or *Colcheſter*, and ſhall deliver back the yarn by any reel ſhorter than two yards about, ſhall be ſubject to the like puniſhment. *ſ.* 4.

3. By the 10 *An. c.* 16. Every clothier, clothworker, cardmaker, or other perſon concerned in the trade of the woollen manufacture, ſhall pay his workmen in money, and not in goods; on pain of 20 *s.* on conviction in 30 days, before one juſtice, on oath of one witneſs, half to the informer, and half to the poor: If he ſhall not pay in 14 days after conviction, the ſame to be levied by the conſtable by warrant of ſuch juſtice, by diſtreſs; and where no ſufficent diſtreſs can be found, to be committed to the gaol or houſe of correction, to be kept to hard labour not exceeding 3 months. *ſ.* 6, 7, 8.

Per-

Perſons aggrieved on this act may appeal to the next ſeſſions, who may allow coſts. *ſ.* 9.

4. By the 1 *G. ſt.* 2. *c.* 15. Every clothier, clothworker, cardmaker, or other perſon concerned in the trade of the woollen manufacture, ſhall pay his workmen in money, and not in goods; on pain of 40 *s.* on conviction (in 40 days) before one juſtice, on oath of one witneſs; to be diſpoſed, if in *London*, to the benefit of *Chriſt's hoſpital*, elſewhere to the poor where the offence ſhall be diſcovered; and if he ſhall not pay in 30 days, to be levied by the conſtable, by warrant of ſuch juſtice, by diſtreſs; and where no ſufficient diſtreſs can be found, to be committed to the common gaol or houſe of correction, to be kept to hard labour for three kalendar months. *ſ.* 7, 8, 12.

5. By the 12 *G. c.* 34. If any perſon ſhall, by day or night, break or enter by force into any houſe or ſhop, with intent to cut or deſtroy any ſerge or other woollen goods in the loom, or any tools employed in the making thereof, or ſhall wilfully and maliciouſly cut or deſtroy any ſuch ſerges or woollen goods in the loom, or on the rack, or ſhall burn, cut, or deſtroy any rack on which any ſuch ſerges or woollen goods are hanged in order to dry, or ſhall wilfully and maliciouſly break or deſtroy any tools uſed in the making ſuch goods; he ſhall be guilty of felony without benefit of clergy. *ſ.* 7.

6. By the 13 *G. c.* 23. Whereas diſputes have ariſen between the clothiers and makers of woollen cloth, and the manufacturers employed by them, concerning the length of the warping bars, and uncertainty of weights, by which wool, yarn, and other materials uſed in the manufacturing of woollen goods have been delivered out to the workmen; for quieting the ſame it is enacted, that it ſhall not be lawful for any maker of mixed, medley, or white cloth, to uſe any bars called warping bars, but only ſuch which ſhall be of the meaſure and length hereafter appointed; that is to ſay, every long warping bar ſhall be in length three yards and three inches, and no more; and every round warping bar ſhall be four yards and four inches round, and no more; the ſaid three inches on the long bar, and the ſaid four inches on the round bar, being in lieu of the over meaſure uſually allowed in cloths; and alſo the thrums at the ends of the warping bars ſhall not exceed 18 inches in length; and if any maker of ſuch cloth ſhall uſe any warping bar of other length or meaſure, or with thrums exceeding 18 inches in length, he ſhall forfeit 10 l. *ſ.* 1.

Every

Every maker of ſuch cloth, or goods mixed with wool, ſhall give out all wool, yarn, or other materials, by weight at 16 ounces to the pound; and ſhall receive back the ſame by the ſame weight, on pain of 5 l. ſ. 2.

Offences againſt this act ſhall be determined by two juſtices on information on oath, within 3 kalendar months; who ſhall levy the penalties by diſtreſs, half to the informer, and half to the poor; for want of ſufficient diſtreſs, to be committed to gaol not exceeding 3 months, or until ſatisfaction be made. ſ. 4.

And all diſputes and demands, relating to work, wages, or damages, between any clothier or maker of woollen goods, or goods mixed with wool, and any weaver or other perſon employed in ſuch manufactures, ſhall be determined by two juſtices, who ſhall on complaint ſummon the parties, and hear and examine on oath, and adjudge ſuch ſatisfaction, and give ſuch coſts and damages to the party grieved, as they ſhall judge reaſonable, and iſſue their warrant to levy ſuch coſts and damages (if not paid in ten days) by diſtreſs, and for want of ſufficient diſtreſs, ſhall commit the party to the county gaol or houſe of correction, not exceeding 3 months, or till ſatisfaction be made. ſ. 5.

Perſons aggrieved by order of ſuch juſtices, may appeal to the next ſeſſions, giving 6 days notice; and the ſeſſions may award ſuch coſts and damages as they ſhall judge reaſonable, and levy the ſame by diſtreſs; and for want of ſufficient diſtreſs, may commit the party to the county gaol or houſe of correction, not exceeding 3 kalendar months, or till ſatisfaction be made; and no proceedings herein ſhall be removed by certiorari or other proceſs, ſ. 6.

And one juſtice, on information on oath, that any perſon is, or is ſuſpected to be, guilty of any the ill practices aforeſaid, may iſſue his warrant to the conſtable or other peace officer, or to any churchwarden or overſeer, directing him in the day time to enter into any houſe, ſhop, warehouſe, or other ſuſpected place, to ſearch for and examine all ſuch bars and weights as ſhall be made uſe of for the purpoſes before mentioned, by any ſuch clothier or maker of woollen goods; and if ſuch perſon ſhall interrupt the officer, he ſhall forfeit 5 l. ſ. 7.

And every maker of mixed, medley, or white broad cloth, ſhall pay the weaver according to the number of yards, that the chains are laid on the warping bars, and not otherwiſe, on pain of 5 l. ſ. 9.

7. By

7. By the 29 *G.* 2. *c.* 33. If any clothier, ſerge-maker, woollen or worſted ſtuff-maker, worſted or woollen yarn ſtocking-maker, or perſon concerned in making any woollen cloths, ſerges, ſtuffs, worſted or woollen yarn ſtockings, or any other perſon any way concerned for himſelf or another, in employing weavers, combers of jerſey, or wool worſted combers, ſpinners, knitters, or other labourers, in the woollen manufactures, ſhall pay any perſon his wages in goods, or by way of truck, bill, or note, or in any other manner than in money; he ſhall (on proſecution in three months) forfeit 20 l. to be recovered by action of debt, by any perſon who ſhall ſue for the ſame.——Or otherwiſe, before two juſtices, by confeſſion, or oath of one witneſs, by diſtreſs (if not paid in 14 days); and to be diſtributed, half to the informer, and half to the poor: And for want of ſufficient diſtreſs, to be committed to the houſe of correction for any time not exceeding 3 months, or until ſatisfaction ſhall be made. Perſons aggrieved by the order of the juſtices may appeal to the next ſeſſions, firſt entring into recognizance with ſufficient ſecurity before the juſtices to proſecute and abide by the order that ſhall be made on ſuch appeal, and giving 8 days notice in writing to the party in whoſe favour the order was made. And the ſeſſions may award coſts and damages, and by their order or warrant may levy ſuch coſts and damages by diſtreſs; and for want of ſufficient diſtreſs, may commit the party to the common gaol, for any time not exceeding 3 months, or until ſatisfaction ſhall be made. And the order of ſeſſions ſhall be final: And no proceedings of the juſtices out of, or in the ſeſſions, ſhall be removed by certiorari, or otherwiſe.

8. And by the 30 *G.* 2. *c.* 12. If any clothier or maker of any mixed, medley, or white broad cloth, ſhall refuſe or neglect to pay to the weaver employed by him his wages or price agreed on in money, within two days next after the work ſhall be performed and delivered to ſuch employer or ſome perſon on his behalf (the ſame being demanded of ſuch employer or perſon employed on his behalf); every ſuch clothier or perſon ſo offending ſhall forfeit 40 s. to be recovered and diſpoſed of as by the ſaid act of the 29 *G.* 2. *c.* 33.

XV. Diſputes between maſters and ſervants in the woollen, linen, fuſtian, cotton, and iron manufactures; by the 1 An. ſt. 2. c. 18. & 13 G. 2. c. 8.

1. By the 1 *An. ſt.* 2. *c.* 18. If any perſon employed in the woollen, linen, fuſtian, cotton, or iron manufactures ſhall imbezzle or purloin any wefts, thrums, or ends of yarn, or any other materials of wool, hemp, flax, cotton, or iron, or ſhall reel ſhort or falſe yarn, and ſhall be convicted by oath of one witneſs, or confeſſion, before one juſtice, he ſhall forfeit double the value of the damages: And if he ſhall neglect or refuſe to pay the ſame, the juſtice ſhall commit him to the houſe of correction until ſatisfaction ſhall be made: And if it ſhall appear to the juſtice, that he is not able to make ſatisfaction, he ſhall be there publickly whipped, and kept to hard labour not exceeding 14 days. *ſ.* 1.

And every perſon buying or receiving any wefts, thrums, or ends of yarn, or other materials of wool, hemp, flax, cotton, or iron, ſhall ſuffer in like manner. *ſ.* 2.

And all payments to the ſaid workmen, ſhall be in money, and not in cloth, victuals, or commodities; and all wool delivered out to be wrought up, ſhall be delivered with declaration of the true weight thereof; on pain that every offender in either of the ſaid caſes, ſhall forfeit double the value of what ſhall be due for ſuch work; and if any ſuch workman ſhall be guilty of any ſuch fraud or default, in the work by him done, he ſhall anſwer double damages. *ſ.* 3.

And all wages, demands, frauds, and defaults of labourers, in the ſaid mauufactures, concerning work done, ſhall be determined by two juſtices, who may ſummon and examine witneſſes on oath: Perſons aggrieved may appeal to the ſeſſions to be holden next after notice of the order of the ſaid two juſtices; and if the ſeſſions give judgment againſt the appellant, they ſhall order him to pay ſuch coſts as to them ſhall ſeem meet. *ſ.* 4.

2. And by the 13 *G.* 2. *c.* 8. If any perſon employed in the working up of any woollen, linen, fuſtian, cotton, or iron manufactures, ſhall purloin, imbezzle, ſecrete, ſell, pawn, exchange, or otherwiſe illegally diſpoſe of any of the materials, whether the ſame or any part thereof be or be not firſt

wrought

wrought up, or ſhall reel ſhort or falſe yarn, and ſhall be convicted thereof as by the 1 *An. ſt.* 2. *c.* 18. he ſhall forfeit double value of the damages, together with ſuch coſts as the juſtice ſhall judge reaſonable; and if not paid immediately, the ſaid juſtice ſhall cauſe him to be committed to the houſe of correction, to be whipped and kept to hard labour, not exceeding 14 days; and for a ſecond, or other ſubſequent offence, for ſuch embezilling or purloining, he ſhall forfeit four times the value of the damages, together with ſuch coſts as the juſtices ſhall judge reaſonable; and if not paid immediately, then ſuch or any other juſtice ſhall cauſe him to be committed to the houſe of correction, to be kept to hard labour for any time not exceeding three months, nor leſs than one month, and alſo during the time of ſuch commitment, ſhall cauſe him to be publickly whipped in the market town where he ſhall be committed, at the market place or croſs, once or oftener, as to ſuch juſtice ſhall ſeem reaſonable. *ſ.* 1.

And the receivers of the ſame ſhall be ſubject to the like penalties. *ſ.* 2.

And the forfeitures by both theſe acts ſhall be half to the party injured, and half to the poor; with the like liberty of appealing on this act, as on the 1 *An.* id. ſ. 3.

XVI. Diſputes between maſters and their workmen, in the leathern manufactures; by the 13 G. 2. c. 8.

If any perſon employed in cutting, paring, waſhing, dreſſing, ſewing, making up, or otherwiſe manufacturing of gloves, breeches, leather, ſkins, boots, ſhoes, ſlippers, wares, or other goods or materials to be made uſe of in any the ſaid employments, or in any branch or particular thereof, ſhall fraudulently purloin, imbezil, ſecrete, ſell, pawn, or exchange all or any part of the gloves, breeches, leather, ſkins, parings, or ſhreds of gloves, or leather, boots, ſhoes, ſlippers, or other the ſaid wares, either before or after they ſhall be made into wares, and be thereof convicted by the oath of the maſter or owner, or other credible witneſs, or confeſſion, before the juſtice where the offence ſhall be committed or the offender ſhall reſide; ſuch juſtice may award him to make ſatisfaction to the party injured, not exceeding double value of the goods ſo purloined or diſpoſed of, half to the party grieved, and half to the poor, together with full charges attending the conviction; to be

levied by diſtreſs and ſale; and if he ſhall not have goods ſufficient, and ſhall not pay immediately, ſuch juſtice ſhall commit him to the houſe of correction or other publick priſon, to be kept to hard labour for 14 days, and whipped in ſuch manner as the juſtice ſhall direct; and for a ſecond, or other ſubſequent offence, he ſhall forfeit four times the value of the damages, together with ſuch coſts as the juſtice ſhall judge reaſonable; and if not paid immediately, to be committed to the houſe of correction or other publick priſon, to be there kept to hard labour not exceeding three months, nor leſs than one month, and alſo during ſuch commitment to be publickly whipped in the market town where he ſhall be committed, at the market place or croſs, once or oftener, as to ſuch juſtice ſhall ſeem reaſonable. *ſ.* 4.

And every perſon who ſhall knowingly or willingly receive any the ſaid goods or materials, either from the perſon offending, or from any other perſon (except the owner) or offer ſo to do; he ſhall, on like conviction, make ſuch recompence in two days, or elſe be ſubject to ſuch diſtreſs, and for want of ſufficient diſtreſs be liable to the like puniſhment, as the perſons ſo purloining or otherwiſe diſpoſing thereof as above; and ſo in like manner for the ſecond and every ſubſequent offence. *ſ.* 5.

And all payments to workmen employed in the ſaid manufactures, ſhall be in money, and not in goods, except by their own requeſt and conſent; and all materials delivered out to be wrought in ſuch manufactures ſhall be delivered with a declaration of the true weight, quantity, or tale thereof; on pain of forfeiting to ſuch manufacturer double value of what ſhall be due for his work; and if ſuch labourer or manufacturer ſhall be guilty of any fraud, abuſe, neglect, or default in the work by him undertaken to be done, he ſhall anſwer to the owner double damages. *ſ.* 6.

And all wages, demands, frauds, abuſes, neglects, and defaults of labourers and manufactures, in the ſaid trades, concerning any work done in ſuch manufacture, ſhall be determined by two juſtices, who may ſummon and examine witneſſes upon oath. *ſ.* 7.

Moreover, every perſon retained or employed in making up any the ſaid manufactures, for any one maſter, and neglecting the performance thereof, either by procuring or permitting himſelf to be ſubſequently employed by any other maſter, before he hath compleated the work, ſhall on conviction by oath of one witneſs before one juſtice, be ſent to

to the houſe of correction, to be kept to hard labour not exceeding one month. *ſ.* 8.

Perſons aggrieved by any order of the ſaid two juſtices, may appeal to the next ſeſſions, giving eight days notice; and the ſeſſions may award coſts to either party. But no order of ſuch two juſtices ſhall be appealed againſt, or quaſhed, for want of form only. *ſ.* 9.

XVII. Diſputes between maſters and their workmen, in the making of hats, or in the woollen, linen, fuſtian, cotton, iron, leather, furr, hemp, flax, mohair, or ſilken manufactures; by the 22 G. 2. c. 27.

If any perſon hired or employed to make up any felt or hat, or to prepare or work up any woollen, linen, fuſtian, cotton, iron, leather, furr, hemp, flax, mohair, or ſilk manufactures, or any manufactures made up of wool, furr, hemp, flax, cotton, mohair, or ſilk, or of any the ſaid materials mixed one with another, ſhall purloin, imbezzle, or otherwiſe unlawfully diſpoſe of any of the materials with which he ſhall be intruſted, whether the ſame be or be not firſt wrought up, or ſhall reel ſhort or falſe yarn, and be convicted thereof by the oath of the owner, or other credible witneſs, or confeſſion, before one juſtice where the offence ſhall be committed, or the party ſhall reſide, he ſhall be committed to the houſe of correction, or other publick priſon, to be kept to hard labour for 14 days, and to be once publickly whipped, at the market place, or other publick place where he ſhall be committed; and for a ſecond or other ſubſequent offence, he ſhall be committed in like manner, for any time not exceeding three months, nor leſs than one month, to be kept to hard labour, and alſo to be publickly whipped twice or oftener. *ſ.* 1.

And if any perſon ſhall be convicted as aforeſaid, of buying, receiving, or taking by way of gift, pledge, ſale, or exchange, or in any other manner, from any perſon whom he knows to be employed to make or prepare any the ſaid manufactures, any thrums or ends of yarns, or any other materials of wool, furr, hemp, flax, cotton, iron, or any leather, mohair, or ſilk, whether the ſame be or be not firſt wrought up, the conſent of the employer not being firſt had; or of buying or receiving in any manner whatſoever, from any other perſon, any of the ſaid materials, whether the ſame be or be not firſt wrought up, knowing them to

be purloined or imbezzled, he ſhall, for the firſt offence, forfeit 20 *l.* and if not paid immediately, the juſtice ſhall commit him to the houſe of correction or other publick priſon, to be kept to hard labour for 14 days, unleſs the forfeiture be ſooner paid; and if it be not paid in 2 days before the expiration of the term, he ſhall be publickly whipped at the market place, or other publick place of the town, once or oftener, as the juſtice ſhall order; and for a ſecond, or other ſubſequent offence, he ſhall forfeit 40 *l.* and if not paid immediately, he ſhall be committed in like manner, to be kept to hard labour not exceeding three months, nor leſs than one month, unleſs the forfeiture be ſooner paid; and if it be not paid in ſeven days before expiration of the term, he ſhall be publickly whipped twice or oftener, as the juſtice ſhall order: And the ſaid forfeitures, after ſatisfaction made thereout to the party injured, with ſuch coſts as ſhall be adjudged by the juſtice, ſhall be equally diſtributed among the poor of the pariſh where the offender ſhall reſide. *ſ.* 2.

(Which conviction ſhall be in the form and words following:

Middleſex, to wit. BE *it remembered, that on the* ——*day of*—— *in the*——*year of his majeſty's reign*, A. B. *was convicted before me* [or *us*] ——*of his majeſty's juſtices of the peace for the ſaid county of* ——[or, *for the riding or diviſion of the ſaid county of* ——or, *for the city, liberty, or town of* —— *in the ſaid county of* —— as the caſe ſhall be] *of buying, receiving, or taking to pawn* (as the caſe ſhall be) ——(ſpecifying the materials or wares ſo bought, received, or taken to pawn) *the property of* C. D. *of*——*in the county of*——*and by him* (or *her*) *delivered to* ——*to be manufactured. Given under my hand and ſeal*, [or, *our hands and ſeals*] *the day and year aforeſaid.*

Which ſhall not be removed by certiorari: And the juſtices ſhall cauſe the ſame to be written on parchment and tranſmitted to the next ſeſſions, to be filed amongſt the records. 23 *G.* 2. *c.* 13. *ſ.* 9.)

Perſons convicted of buying or receiving any the ſaid materials, may appeal to the next ſeſſions; in which caſe the execution of the judgment ſhall be ſuſpended, the perſon entering into a recognizance before the juſtice, at the time of the conviction, with two ſureties, in double the ſum adjudged, to proſecute the appeal, and to be forthcoming

coming to abide the determination of the juſtices in the ſaid ſeſſions; and the ſeſſions may award coſts to either party; and if the judgment be affirmed, the appellant ſhall immediately pay the ſum adjudged, with coſts; or in default thereof, ſhall ſuffer the penalties before directed. *ſ.* 3.

And if any perſon ſhall be convicted of purloining or imbezzling any the ſaid materials, or of buying or receiving the ſame in manner before deſcribed, the juſtice before whom the conviction ſhall be, may iſſue his warrant to any perſon, impowering him in the preſence of a conſtable, to enter into and ſearch in the day time, the houſes and other places belonging to ſuch perſon, and to bring ſuch materials as ſhall be found before the ſaid juſtice, to be kept in cuſtody by him; and if in 24 days it ſhall be made appear to the juſtice, that the perſon from whoſe houſe the ſaid materials ſhall be ſo taken, is the lawful owner, they ſhall be reſtored to him, otherwiſe they ſhall be deemed to be purloined or imbezzled, and ſhall be publickly ſold, and the money ariſing thereby (charges of ſale being firſt deducted) ſhall be equally diſtributed amongſt the poor of the pariſh where the perſon convicted ſhall reſide. *ſ.* 4.

And the ſaid juſtice ſhall, within three days after ſuch materials ſhall be brought to him, give notice thereof in writing under his hand and ſeal, to the perſon convicted, appointing a time and place for his attending to prove his property therein; which ſhall be within 21 days, and not leſs than 18 days after ſuch notice, and if ſuch perſon be in any houſe of correction or other priſon, the juſtice ſhall cauſe a copy of the ſaid notice, atteſted under his hand and ſeal, to be delivered to the keeper; who ſhall bring the ſaid perſon at the time and place ſpecified, on pain of forfeiting to the priſoner the full value of the ſaid materials, by diſtreſs and ſale, by warrant of the ſaid juſtice, if not paid immediately. *ſ.* 5.

If any perſon ſhall be aggrieved by the judgment of the juſtice, relating to the ſale of the materials, he may appeal to the next ſeſſions, and in the mean time the ſale ſhall be poſtponed; a written notice under the hand of the appellant, ſignifying his intention to appeal, being given to the juſtice, before the time appointed for the ſale; and if the appellant ſhall not proſecute the appeal, or the judgment ſhall be affirmed, the ſeſſions may award coſts to the defendant. *ſ.* 6.

And if any perſon ſhall not make uſe of the whole of the materials, and ſhall not return the remainder in 21 days (if

required by the owner) this ſhall be deem ed imbezzling and purloining. *ſ.* 7.

And upon complaint on oath of any offence againſt this act to any one juſtice, he ſhall iſſue his warrant for bringing the offender before him, or any other juſtice, who ſhall hear and determine the ſame. *ſ.* 8.

And if any perſon ſhall be employed to work up any of the ſaid manufactures for any one maſter, and ſhall neglect or refuſe the performance thereof, by permitting himſelf to be ſubſequently retained by any other perſon, before he ſhall have compleated the ſame; he ſhall, on conviction on the oath of one witneſs, before one juſtice, be ſent to the houſe of correction, to be kept to hard labour not exceeding one month. *ſ.* 9.

But this ſtatute ſhall not repeal the 13 & 14 *C.* 2. nor the 20 *C.* 2. nor the 8 & 9 *W.* beforementioned. *ſ.* 10.

Moreover, all contracts or agreements, and all by-laws, rules and orders made in any unlawful clubs and ſocieties, by any perſons employed in any woollen manufacture, or in the making of felts or hats, or in any manufacture of ſilk, mohair, furr, hemp, flax, linen, cotton, fuſtion, iron, or leather, or in any manufactures made up of wool, furr, hemp, flax, cotton, mohair, or ſilk, or any of the ſaid materials mixed one with another, for regulating any of the ſaid trades, or for ſettling the prices of goods, or for advancing their wages, or for leſſening their uſual hours of work, ſhall be void; And if any ſuch perſon ſhall be concerned in any ſuch combination, he ſhall on conviction in three kalendar months, on the oath of one witneſs before two juſtices be committed to the houſe of correction, to be kept to hard labour, not exceeding three months, or to the common gaol not exceeding three months. *ſ.* 12.

And if any perſon ſhall depart from his ſervice before the end of the term, or ſhall quit or return his work before it be finiſhed, unleſs for ſome reaſonable cauſe to be allowed by two juſtices; he ſhall on the like conviction before two juſtices, be committed to the houſe of correction, to be kept to hard labour not exceeding three months. *id.*

And if any ſuch perſon ſhall willfully damnify, ſpoil, or deſtroy, without conſent of the owner, any work committed to his charge, he ſhall, on conviction as aforeſaid, forfeit to the owner double value, by diſtreſs, by warrant of two juſtices; and for want of ſufficient diſtreſs, to be committed to the houſe of correction, to be kept to hard labour,

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for any time not exceeding three months, or till ſatisfaction be made. *id.*

And every ſuch maſter ſhall pay his workmen in money, and not otherwiſe, and ſhall not make any deduction on account of any goods ſold or delivered previous to the agreement: And for the more eaſy recovering the ſaid wages, two juſtices upon complaint (in three months, 13 *G. c.* 23.) ſhall ſummon the party offending, and for non-payment ſhall iſſue their warrant to levy the ſame by diſtreſs; and for want of ſufficient diſtreſs, ſhall commit the offender to gaol for ſix months, or until he ſhall pay, or give full ſatisfaction for the ſame, to the good liking of the party grieved. *id.*

And every perſon paying the ſame otherwiſe than in money, ſhall forfeit 10 *l.* half to the informer, and half to the party grieved, by diſtreſs as aforeſaid. *id.*

Perſons aggrieved by order of the two juſtices may appeal to the next ſeſſions, giving reaſonable notice; the reaſonableneſs of which notice ſhall be determined by the juſtices at the ſaid ſeſſions; and if reaſonable time of notice was not given, they ſhall adjourn the appeal to the next ſeſſions after; and the ſeſſions may award coſts to either party. *id.*

Moreover, if any perſon ſhall aſſault or abuſe any maſter or other perſon concerned in any of the ſaid manufactures, whereby he ſhall receive any bodily hurt, for not complying with any ſuch illegal by-laws, rules, or orders; or ſhall write or cauſe to be written, or knowingly ſend or cauſe to be ſent any letter, writing, or meſſage, threatning any harm to any ſuch perſon, or threatning to burn, pull down, or deſtroy any of his houſes, or cut down any of his trees, or to maim or kill any of his cattle, for not complying with any demands of his workmen, or for not conforming to any ſuch illegal by-laws, rules, or orders; he ſhall, on conviction by indictment, in 12 kalendar months, be guilty of felony, and tranſported for ſeven years. *id.*

XVIII. Diſputes between maſters and their workmen in the manufacture of clocks and watches; by the 27 G. 2. c. 7.

If any perſon employed by any one practiſing the trade of clockmaking, or watchmaking, or any part or branch thereof, to make, finiſh, alter, repair, or clean any clock, watch, or part thereof; or intruſted by any perſon prac-

tiſing the ſaid trade or trades, with any gold, ſilver, or other metal or material, to be, or that ſhall be, in the whole or in part, wrought or manufactured for any part of a clock or watch, or any diamond, or other precious ſtone, to be, or that ſhall be, ſet or fixed in or about any clock or watch ſhall purloin, imbezzle, ſecrete, ſell, pawn, exchange, or otherwiſe unlawfully diſpoſe of any clock, watch, gold, ſilver, or other metal or material, or any part thereof, or any diamond or other precious ſtone, with which he ſhall be ſo intruſted; and ſhall be thereof convicted by the oath of the owner, or other credible witneſs, or confeſſion, before one juſtice, where the offence ſhall be committed, or the perſon ſo charged ſhall reſide, he ſhall for the firſt offence forfeit 20 *l.* and if not forthwith paid, the juſtice ſhall commit him to the houſe of correction or other publick priſon, there to be kept to hard labour for the ſpace of 14 days, unleſs the forfeiture ſhall be ſooner paid; and if within two days before the expiration of the ſaid 14 days ſuch forfeiture ſhall not be paid, the juſtice may order him to be publickly whipped at the market place, or ſome other publick place of the city, town, or place, where he ſhall be committed; and for a ſecond, or other ſubſequent offence, he ſhall forfeit 40 *l.* in like manner, and if not paid forthwith, the juſtice ſhall commit him as aforeſaid, to be kept to hard labour for any time not exceeding three months, nor leſs than one month, unleſs the forfeiture ſhall be ſooner paid; and if within ſeven days before the expiration of the time for which he ſhall be committed, the forfeiture ſhall not be paid, the juſtice may order him to be whipped in like manner, twice or oftener, as to ſuch juſtice ſhall appear reaſonable.

And if any perſon ſhall buy, receive, accept, or take by way of gift, pawn, pledge, ſale, or exchange, or in any other manner, of or from any perſon whomſoever, any clock or watch, or part thereof, or any gold, ſilver, or other metal or material as aforeſaid, whether the ſame, or any part thereof, be or be not wrought or manufactured, or any ſuch diamond or other precious ſtone, knowing the ſame to be ſo purloined or embezzled; he ſhall, on the like conviction, for the firſt offence forfeit 20 *l.* and if not forthwith paid, the juſtice ſhall commit him in like manner, to be kept to hard labour for 14 days, unleſs the forfeiture ſhall be ſooner paid, and if within two days before the expiration of the ſaid 14 days, the ſaid forfeiture ſhall not be paid, the juſtice ſhall order him to be publickly whipped as aforeſaid, once or oftener, as to ſuch juſtice ſhall appear reaſonable;

reaſonable; and for a ſecond or other ſubſequent offenſee, he ſhall forfeit 40*l.* and if not forthwith paid, the juſtice ſhall commit him as aforeſaid, to be kept to hard labour, for any time not exceeding three months, nor leſs than one month, unleſs the forfeiture ſhall be ſooner paid; and if within ſeven days before the expiration of the time for which he ſhall be committed, the forfeiture ſhall not be paid, the juſtice ſhall order him to be publickly whipped as aforeſaid, twice or oftener, as to him ſhall appear reaſonable.

And one juſtice on complaint to him made upon oath, of any offence againſt this act, may iſſue his warrant for apprehending and bringing before him, or before any other juſtice of the ſame place, the perſon ſo charged.

And the conviction ſhall be in this form.

Middleſex, to wit, BE *it remembered that on the* —— *day of* —— *in the* — *year of his majeſty's reign*, A. B. *was convicted before me* (or *us*) —— *of his majeſty's juſtices of the peace for the ſaid county of* —— *or for the* —— *riding* (or *diviſion*) *of the ſaid county of* —— *or for the city, liberty, or town of* —— *in the ſaid county of* —— (as the caſe ſhall be) *of purloining, imbezzling, ſecreting, ſelling, pawning, exchanging, or unlawfully diſpoſing of or of buying, receiving, or taking to pawn* (as the caſe ſhall happen to be)—— (ſpecifying the reſpective goods, materials or effects) *the property of* C. D. *of* —— *in the county of* ——. *Given under my hand and ſeal* (or *our hands and ſeals*) *the day and year aforeſaid.*

If any perſon ſhall think himſelf aggrieved by the judgment of the juſtice, he may appeal to the next ſeſſions; in which caſe the execution of the judgment ſhall be ſuſpended, the perſon ſo convicted entering into a recognizance at the time of the conviction, with two ſureties, in double the ſum adjudged, to proſecute the appeal with effect, and to be forthcoming to abide the judgment and determination of the juſtices in ſuch ſeſſions; and the juſtices there ſhall hear and determine the ſame, and award ſuch coſts to either party, as to them ſhall appear juſt and reaſonable; and if the judgment ſhall be affirmed, the appellant ſhall immediately pay the ſum adjudged, together with ſuch coſts as ſhall by the court be awarded; or in default thereof, ſhall ſuffer the penalties as for purloining, imbezzling, or receiving as aforeſaid.

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The ſaid forfeitures, after ſatisfaction made thereout to the party injured, together with ſuch coſts of proſecution as the juſtice ſhall judge reaſonable, ſhall go to the uſe of the poor where the offender ſhall reſide.

And the juſtice ſhall cauſe the conviction to be fairly written upon parchment, and tranſmitted to the next ſeſſions, there to be filed and kept among the records.

And the ſame ſhall not be removed by certiorari.

XIX. *Diſputes between maſters and ſervants in huſbandry, artificers, handicraftſmen, miners, colliers, keelmen, pitmen, glaſſmen, potters, and other labourers; by the* 20 G. 2. c. 19. & 6 G. 3. c. 25.

By conſtruction of law upon the ſtatute of the 5 *El.* the juſtices had a power of compelling the payment of the wages which they had rated and aſſeſſed; but the ſaid ſtatute being deficient in two material points, to wit, in extending only to ſuch wages as ſhould be rated, and to ſervants in husbandry only; and moreover, there being therein (as hath been obſerved) no power to admit the ſervant's oath as evidence; therefore by the 20 *G.* 2. *c.* 19. it is enacted as follows:

All complaints, differences, and diſputes between maſters or miſtreſſes and ſervants in husbandry hired for a year [or for a leſs time, 31 *G.* 2. *c.* 11.]; or between maſters and miſtreſſes and artificers, handicraftſmen, minors, colliers, keelmen, pitmen, glaſſmen, potters, and other labourers employed for any certain time or in any other manner; ſhall be determined (A) by one juſtice, where the maſter or miſtreſs ſhall inhabit, altho' no rate or aſſeſſment of wages has been made that year; which juſtice ſhall (B) examine on oath any ſuch ſervant or other the ſaid perſons, or any other witneſs touching ſuch complaint, and make ſuch order (C) for payment of wages, as to him ſhall ſeem juſt and reaſonable, provided that the ſum in queſtion do not exceed 10*l.* with regard to any ſervant, nor 5*l.* with regard to any other perſons before mentioned; and in caſe of non-payment for 21 days, ſuch juſtice may iſſue his warrant to levy the ſame by diſtreſs (D). *ſ.* 1.

And by the ſaid ſtatute, ſuch juſtice on application or complaint on oath by any maſter, miſtreſs, or employer (E), againſt any ſuch ſervant, artificer, handicraftſman, miner, collier, keelman, pitman, glaſſman, potter, or labourer, con-

cencerning any miſdemeaner, miſcarriage, or ill behaviour in ſuch his ſervice or employment, may hear and determine the ſame (F), and puniſh the offender by commitment (G) to the houſe of correction, there to remain and be corrected, and held to hard labour not exceeding one kalendar month, or otherwiſe by abating ſome part of his wages (H), or by diſcharging (I) ſuch ſervant or other the ſaid perſons from their ſervice or employment. *ſ.* 2.

And in like manner, ſuch juſtice, on complaint or application on oath by any ſuch ſervant (K), artificer, handicraftſmen, miner, collier, keelman, pitman, glaſſman, potter, or other labourer, againſt ſuch maſter, miſtreſs, or employer, concerning any miſuſage, refuſal of neceſſary proviſion, cruelty or other ill treatment, may ſummon (L) ſuch maſter, miſtreſs, or employer, to appear before him at a reaſonable time to be prefixed in ſuch ſummons; and he ſhall examine into the matter of ſuch complaint, whether ſuch maſter, miſtreſs, or employer, ſhall appear or not, proof being made upon oath of their being duly ſummoned; and upon proof thereof made upon oath, to his ſatisfaction, may diſcharge (M) ſuch ſervant, or other perſon aforeſaid, from his ſervice and employment, which diſcharge ſhall be given under his hand and ſeal *gratis*. id.

If any perſon ſhall think himſelf aggrieved by ſuch determination, order or warrant of ſuch juſtice (except any order of commitment) he may appeal to the nebt ſeſſions, who may award coſts to either party, not exceeding 40*s*. to be levied by diſtreſs, in manner before mentioned. *ſ.* 5.

And no certiorari ſhall iſſue to remove any proceedings hereupon. *ſ.* 6. Provided, that nothing herein ſhall extend to the ſtannaries in Devon and Cornwall. *ſ.* 7.

Note; The words in the aforegoing ſtatute [*and other labourers, empleyed for any certain time, or in any other manner*] are very general and comprehenſive, but yet perhaps ought not to be underſtood without ſome limitation; eſpecially it ſeemeth not neceſſary to extend them to any of the workmen in the woollen, linen, cotton, iron, leather, furr, hempen, or other manufactures herein before ſpecified, becauſe the law hath provided other methods of proceeding therein, and particularly becauſe the ſtatute of the 22 *G.* 2. which is ſubſequent to this ſtatute, takes no notice of this ſtatute, but makes divers regulations in the aforeſaid inſtances, which if this ſtatute hath been ſuppoſed to extend unto them, would have been ſuperfluous and impertinent. And with leſs reaſon may the word *labourers* ſeem to extend to footmen, coachmen, carriers, and ſuch like; but

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from the company with which it is ranked, to wit, miners, colliers, keelmen, and the like, it ſeems moſt properly to ſignify ſuch perſons, not being brought up to or employed in trades, as procure their ſuſtenance by bodily labour. By the 6 *G.* 3. *c.* 25. If any artificer, callicoe printer, handicraftſman, miner, keelman, pitman, glaſſman, potter, labourer, or other perſon, ſhall contract with any perſon for any time or term, and ſhall abſent himſelf from his ſervice before the term of his contract ſhall be compleated, or be guilty of any other miſdemeanor; it ſhall be lawful for one juſtice of the county or place where ſuch offender ſhall be found, on complaint upon oath to him made by ſuch maſter or by his ſteward or agent, to iſſue his warrant to apprehend ſuch perſon complained of, and to examine into the nature of the complaint; and if it ſhall appear to ſuch juſtice, that the perſon complained of hath not fulfilled his contract, or hath been guilty of any miſdemeanor, the ſaid juſtice ſhall commit him to the houſe of correction for the county or place where ſuch juſtice ſhall reſide, for any time, not exceeding 3 months, nor leſs than one month.

Perſons aggrieved by ſuch determination, order, or warrant of the juſtice (except any order of commitment) may appeal to the next ſeſſions, giving ſix days notice to the juſtice and to the parties, and entring into recognizance, within 3 days after ſuch notice, before a juſtice, with ſufficient ſurety, to try the appeal at, and abide the order or judgement of, and pay ſuch coſts as ſhall be awarded by the juſtices at ſuch ſeſſions: which ſaid juſtices, at their ſaid ſeſſions, on proof of ſuch notice given, and of entring into ſuch recognizance, ſhall hear and determine the appeal, and give ſuch relief and coſts to either party, as they ſhall judge reaſonable, and their determination ſhall be final and concluſive to all parties concerned.

Provided, that nothing herein ſhall extend to the ſtanneries in Devon and Cornwall.

XX. Shipmaſters and their ſeamen.

By the 2 *G.* 2. *c.* 36. It ſhall not be lawful for any maſter of a ſhip bound to parts beyond ſea, to carry any ſeaman or mariner, except his apprentices, to ſea, without firſt agreeing with them for their wages, which agreement ſhall be made in writing, declaring what wages each ſeaman is to have reſpectively, during the whole voyage,

or

or for the time he ſhall ſhip himſelf for; and alſo to expreſs the voyage for which the mariner ſhipt, to perform the ſame, and to be ſigned by both parties; on pain that the maſter ſhall forfeit 5 *l.* for every ſuch ſeaman to *Greenwich* hoſpital, to be recovered on oath of one witneſs, before one juſtice, who ſhall iſſue his warrant to bring ſuch maſter before him; to be levied by diſtreſs; and if no diſtreſs can be found, to be committed to gaol till he ſhall pay the ſame.

Such mariner ſhall alſo ſign the agreement, in 3 days after he is entred on board.

And if any mariner ſhall deſert, or refuſe to proceed on the voyage, or ſhall deſert beyond the ſeas, after he ſhall have ſigned ſuch agreement, he ſhall forfeit to the owner of the ſhip the wages due to him.

And if any mariner ſhall deſart or abſent himſelf, after he hath ſigned ſuch contract; on application of the maſter, or owner of the ſhip, to one juſtice, he ſhall iſſue his warrant to apprehend ſuch mariner: And if he ſhall refuſe to proceed on the voyage, and ſhall not give a ſufficient reaſon for ſuch refuſal, then to be committed to the houſe of correction, to be kept to hard labour, not exceeding 30 days, nor leſs than 14 days.

And if any mariner ſhall abſent himſelf from the ſhip, without leave of the maſter, or other officer having charge of ſuch ſhip, he ſhall for every day's abſence forfeit two days pay to *Greenwich* hoſpital.

And if any mariner, not entring into the king's ſervice, ſhall leave the ſhip before he ſhall have a diſcharge in writing by the maſter, he ſhall forfeit one month's pay, to be recovered and diſpoſed of as hereafter is mentioned.

And the maſters ſhall pay the mariners their wagers, if demanded, in 30 days after the ſhip's being entred at the cuſtom houſe (unleſs there is a covenant to the contrary), or at the time they ſhall be diſcharged, which ſhall firſt happen, deducting the penalties of this act: on pain of paying to each mariner that ſhall be unpaid, 20 *s.* above his wages, to be recovered as the wages.

But no mariner by entring into, or ſigning ſuch agreement, ſhall be deprived of any means for recovery of wages, which he may now uſe: And the maſter ſhall be obliged to produce the contract, and not the mariner.

And the maſter ſhall deduct out of the wages all the penalties of this act, and enter the ſame in a book, and make oath, if required, to the truth thereof; which book ſhall be ſigned by the maſter, and two principal officers of the ſhip;

ſhip: which forfeitures (except forfeiture of wages to the owner on deſertion, or refuſing to proceed on the voyage) ſhall be applied to *Greenwich* hoſpital, to be paid to the officer in any port who collects the 6 *d.* a month deducted out of ſeamens wages, for the uſe of the hoſpital; which officer ſhall have power to adminiſter an oath to ſuch maſter, touching the truth of ſuch penalties.

The maſter deducting the ſaid penalties, and not paying them over in three months, ſhall forfeit treble to the ſaid hoſpital; to be recovered as any penalties, for not duly paying the 6 *d.* a month.

Nevertheleſs, this act ſhall not debar any ſeaman from entering into the king's ſervice, nor ſhall he forfeit his wages in that caſe, nor ſhall ſuch entry be deemed a deſertion.

Note, the ſaid act was at firſt but temporary, and continued from time to time; but by the 2 *G.* 3. *c.* 31. it is made perpetual, and extended to his majeſty's colonies in *America*; the penalties there, to *Greenwich* hoſpital, to be paid to ſuch perſon as the commiſſioners of the admiralty ſhall direct: maſter deducting, and not paying the ſame in three months, ſhall forfeit treble, to the ſaid hoſpital.

XXI. Taylors and their workmen within the bills.

By the 7 *G. ſt.* 1. *c.* 13. All contracts by or between journeymen taylors within the bills, for advancing their wages, or leſſening their hours of work, ſhall be void; and perſons entering into ſuch agreement, ſhall on conviction in three months, on oath of one witneſs, before two juſtices, be committed to the gaol or houſe of correction for any time not exceeding two months.

And the ſeſſions from time to time, upon application to them made, ſhall appoint the wages and hours of work; which all taylors and their workmen ſhall obſerve, on pain of impriſonment by ſuch juſtices for any time not exceeding two months, on proſecution in ſix days.

And if any journeyman taylor ſhall depart from his ſervice before the end of his term, or before his work be finiſhed, or ſhall refuſe to enter into work, unleſs for cauſe to be allowed by two juſtices, he ſhall be ſent to the houſe of correction not exceeding two months.

Taylors allowing greater wages than ſo limited, ſhall forfeit 5 *l.* on conviction in three months, half to the informer, and half to the poor; and journeymen taking

greater

greater wages, ſhall be ſent to the houſe of correction not exceeding two months.

Perſons aggrieved by any order of two juſtices, may appeal to the next ſeſſions, giving ſix days notice; and the ſeſſions may award coſts to either party.

And by the 8 *G.* 3. *c.* 17. Whereas doubts and difficulties have ariſen upon the aforeſaid act of 7 *G. ſt.* 1. *c.* 13. concerning the proſecution of offenders, and many devices have been practiſed to evade the regulations made by virtue thereof, and it is neceſſary in ſome other reſpects that the ſaid act ſhould be explained and amended; it is therefore enacted, that the hours of work for ſervants or journeymen to be employed in the taylor buſineſs, within *London* and five miles thereof, ſhall be from ſix in the morning till ſeven in the evening, with an interval of one hour only for refreſhment. And the wages for the ſame ſhall be, any ſum not exceeding 2 *s.* 7 *d.* ½ a day; except during the ſpace of one calendar month from the publication of any order for a general mourning by the earl marſhall in the *London* gazette; and during that ſpace, any ſum not exceeding 5 *s.* 1 *d.* ½. *ſ.* 1.

And if any maſter ſhall, directly or indirectly, give, in money, or otherwiſe, any more or greater wages than the wages aforeſaid, or ſuch other wages as ſhall from time to time be appointed by virtue of this act; or if any workman within the ſaid limits ſhall, directly or indirectly, take, in money or otherwiſe, any more or greater wages than as aforeſaid; he ſhall, on information or proſecution within three months, and conviction thereof, before two juſtices, by confeſſion or oath of one witneſs, be committed to the houſe of correction, there to be kept to hard labour, or to the common gaol, for any time not exceeding two months, nor leſs than 14 days. *ſ.* 2.

And any two juſtices within the limits aforeſaid, upon information on oath made to them, by any perſon whatſoever, that there is reaſon to ſuſpect, that any perſon hath given or received greater wages than as aforeſaid, ſhall iſſue their ſummons requiring any clerk, foreman, apprentice, ſervant, or other perſon employed by the perſon ſo ſuſpected to have offended, or any other perſon whoſe attendance ſuch informant ſhall think neceſſary for the purpoſe of giving evidence, to attend ſuch juſtices, or ſome other two juſtices acting for ſuch county or place, at a time and place in ſuch ſummons ſpecified, to teſtify concerning the premiſes; and if ſuch perſon ſo ſummoned ſhall not attend, and proof ſhall be made of the ſervice of

ſuch

ſuch ſummons, either perſonally or by leaving the ſame at the laſt or uſual place of abode of ſuch perſon; ſuch two juſtices, or any other two juſtices acting for ſuch county or place (unleſs a reaſonable excuſe be made for ſuch non-attendance to the ſatisfaction of ſuch juſtices) ſhall iſſue their warrant to apprehend and bring ſuch perſon before them, or ſome other two juſtices acting for the ſaid county or place, to be examined touching the premiſes in the ſaid information contained: And if any ſuch perſon ſo attending, or being brought before ſuch juſtices, ſhall refuſe to be examined or give teſtimony; he ſhall, by the ſaid juſtices, be committed to the houſe of correction, until he ſhall ſubmit to be examined and give teſtimony as aforeſaid. *ſ.* 3.

And to prevent different rates of wages, the mayor, aldermen, and recorder of *London*, at their general quarter ſeſſions or general ſeſſions, ſhall, from time to time, on application to them made, alter, regulate, and order the wages for perſons employed in the buſineſs of making men and womens clothes within *London*, and five miles thereof, and the hours of work; and within fourteen days after making every ſuch order, ſhall cauſe the ſame to be printed and publiſhed in ſuch manner as to them ſhall ſeem meet, at the reaſonable expence of the perſons applying for the ſame. *ſ.* 4.

Provided always, that advertiſing ſuch orders or ſeſſions three times in any two daily news papers in *London* or *Weſtminſter*, ſhall be allowed ſufficient notice and publication. *ſ.* 5.

Provided alſo, that nothing herein ſhall extend to regulate the wages or hours of work of perſons employed as foremen; or to hinder the paying or receiving other wages (not exceeding 6*d.* an hour in times of general mourning, and 3*d.* an hour at any other time) before or after the hours of work limited as aforeſaid, ſo as ſuch over work be not at any one time leſs than one hour, nor be done in fraud of the aforeſaid regulations. *ſ.* 6.

And if any maſter reſiding within the ſaid limits ſhall employ any perſon out of the ſaid limits, with intent to elude this act, and ſhall give greater wages than as aforeſaid; he ſhall forfeit 500*l.* with coſts, half to the king, and half to him that ſhall ſue. *ſ.* 7.

Perſons convicted by the two juſtices as aforeſaid may appeal to the next general quarter ſeſſions or general ſeſſions, giving immediate notice of ſuch appeal, and finding ſufficient ſecurity to the ſatisfaction of ſuch juſtices, for being

being perſonally preſent at the ſaid ſeſſions, and for proſecuting the appeal with effect, and abiding by the judgment of the court. And the ſeſſions may award coſts to either party. And if the conviction ſhall be confirmed, the appellant ſhall be committed to priſon for the time ſpecified in the conviction, and until payment of the coſts. *ſ.* 8.

XXII. Shoemakers and their workmen within the bills.

By the 9 *G. c.* 27. If any journeyman ſhoemaker within the bills of mortality, ſhall be accuſed by his maſter of purloining any ſhoes or other wares or materials, one juſtice where the offence ſhall be committed, or the offender ſhall inhabit, on oath of ſuch offence, may ſummon the party, or iſſue his warrant to apprehend him; and if the ſame is proved before him by confeſſion, or oath of one witneſs, he ſhall award ſatisfaction for damages and charges, and levy the ſame by diſtreſs; and for want of ſufficient diſtreſs, ſhall cauſe the offender to be whipped where the offence was committed; and for a ſecond or other offence, he ſhall commit him to the houſe of correction, not exceeding one month, nor leſs than 14 days.

And every perſon who ſhall buy, receive, or take in pawn the ſame, ſhall be ſubject to the ſame puniſhment.

And two juſtices on complaint on oath, may iſſue their warrant for ſearching in the day time for goods ſo purloined, and break open doors, and every perſon hindring ſuch ſearch ſhall forfeit 10*l.* to him who ſhall ſue in two months; and if ſuch goods ſhall be found, they ſhall reſtore them to the owner, and cauſe the offender to make ſatisfaction for the damages and charges, as aforeſaid.

And every perſon retained by one maſter, who ſhall ſuffer himſelf to be retained by any other, before he hath finiſhed his work, ſhall, on conviction on oath of one witneſs, before one juſtice, be ſent to the houſe of correction not exceeding one month.

Perſons aggrieved, may appeal to the next ſeſſions, giving 8 days days notice.

XXIII. How far the maſter is anſwerable for the ſervant.

1. The maſter is indictable for a nuſance done by his ſervant; as for throwing dirt in the highways. L. *Raym.* 264.

But nevertheleſs it ſeemeth, that the ſervant alſo is indictable; for Mr. *Hawkins* ſays, that a ſervant is not excuſed the commiſſion of any crime, by the command or coertion of his maſter. 1 *Haw.* 3.

2. If goods are delivered to the ſervant of a carrier, and the goods are loſt, an action lies againſt the maſter. *Wood b.* 1. *c.* 6.

3. A ſervant with a cart, ran againſt another cart, wherein was a pipe of ſack, and overturned the cart and ſpoiled the ſack; an action lies againſt the maſter. 2 *Salk.* 441.

4. *M.* 10 *W. Jones* and *Hart.* A pawnbroker's ſervant took a pawn; the pawner came and tendred the money to the ſervant; he ſaid he had loſt the goods; upon this the pawner brought an action againſt the maſter; and it was held well. 2 *Salk.* 441.

5. *H.* 8 *G. Mead* and *Hammond.* The plaintiff, according to the common courſe of dealing, delivered to the defendant's ſervant an ingot of gold to aſſay; and it not being returned, he brought an action againſt the maſter. And *Pratt* Ch. J. directed the jury, that the delivery of the ſervant was ſufficient to maintain the action againſt the maſter on proving a ſubſequent demand and refuſal; ſo the plaintiff had a verdict. *Str.* 505.

6. *M.* 8 *G. Carey* and *Webſter.* The defendant was a clerk of the *South-ſea* company, and took in payments. The plaintiff paid him 600 *l.* and he paid it over to the company. And by *Pratt* Ch. J. No action in this caſe lies againſt the ſervant. If he had not paid it over, the plaintiff would have had his option, either to charge him or the company; as in the common caſe of payment to a goldſmith's ſervant, who doth not carry it to the account of his maſter, the party hath an election to go againſt either; he may charge the ſervant, becauſe till the money is paid over, the ſervant receives it to his uſe; or he may paſs by the ſervant, and make his demand upon the maſter, becauſe the payment to the ſervant is made in confidence of the credit given him by the maſter. *Str.* 480.

A. Complaint of a ſervant for wages; on the 20 *G.* 2. *c.* 19. and 31 *G.* 2. *c.* 11.

Weſtmorland. THE *information and complaint of* A. S. *late of* ——— *in the county aforeſaid, husbandman, exhibited before me* J. P. *eſquire, one of his majeſty's*

jeſty's juſtices of the peace for the ſaid county, the ——— *day of* ——— *in the year* ——— *who on his oath ſaith,*

That at Whitſuntide laſt he was hired by A. M. *of* — *aforeſaid in the county aforeſaid, to be his ſervant in huſbandry for the term of one half year* [or as the caſe ſhall be] *for the wages of* ——— *That he the ſaid* A. S. *hath duly performed the ſaid ſervice; and that he the ſaid* A. M. *refuſeth to pay to him the ſaid* A. S. *the wages juſtly due unto him for the ſaid ſervice: And thereupon he the ſaid* A. S. *prayeth that juſtice may be done, and that the ſaid* A. M. *may be ſummoned before me the juſtice aforeſaid, to anſwer unto the ſaid complaint.*

Before me.
J. P.

B. Summons of the maſter thereupon.

Weſtmorland, { To the conſtable of ——— in the ſaid county.

WHEREAS *information and complaint hath been made unto me* —— *one of his majeſty's juſtices of the peace in and for the ſaid county, upon the oath of* A. S. *late of* —— *in the ſaid county, huſbandman, that at Whitſuntide laſt he the ſaid* A. S. *was hired by* A. M. *of* —— *aforeſaid in the county aforeſaid, to be his ſervant in huſbandry for the term of* —— *for the wages of* —— *And that he the ſaid* A. S. *hath duly performed the ſaid ſervice; And that he the ſaid* A. M. *doth refuſe to pay to him the ſaid* A. S. *the wages juſtly due unto him for the ſaid ſervice: Theſe are therefore to command you forthwith to ſummon the ſaid* A. M. *to appear before me at* ——— *in the ſaid county, on* ——— *the* ——— *day of this preſent month of* ——— *at the hour of* ——— *in the afternoon of the ſame day, to ſhew cauſe why the ſaid wages ſhould not be paid. And be you then there to certify what you ſhall have done in the premiſſes. Given under my hand and ſeal the* —— *day of* ——— *in the* ——— *year of the reign of* ———

C. Order for payment of the ſame.

Weſtmorland. WHEREAS *information and complaint hath been made unto me* —— *one of his majeſty's juſtices of the peace in and for the ſaid county, upon the oath of* A. S. *of* —— *in the ſaid county, huſbandman, that at Whitſuntide laſt he the ſaid* A. S. *was hired by* A. M. *of* —— *in the ſaid county, huſbandman, to be a ſervant*

in husbandry, to and with him the said A. M. *for the space of* ——— [or, *artificer, glassman, pitman, labourer,* or otherwise as the case shall be] *and that he the said* A. S. *hath duly performed the said service; and that he the said* A. M. *doth refuse to pay to him the said* A. S. *the wages justly due unto him for such service as aforesaid; And whereas the said* A. M. *having appeared before me, in pursuance of my summons for that purpose, hath not proved to me, that the said wages have been duly paid unto him the said* A. S. *as aforesaid, nor hath shewed to me any just cause why the said wages should not be paid, and hath not paid the same:* [Or, *And whereas it appears to me, upon the oath of* A. C. *constable of* ——— *aforesaid, that he the said* A. C. *by virtue of my precept to him directed, did duly summon the said* A. M. *to appear before me at a certain time and place therein prefixed, to shew cause why the said wages should not be paid; and the said* A. M. *hath neglected to appear according to the said summons, and hath not shewed any cause as aforesaid*] *I therefore having duly examined into the truth and matter of the said complaint, and upon due consideration had thereof, do hereby adjudge, determine, and order, that he the said* A. M. *upon due notice hereof, do pay or cause to be paid to him the said* A. S. *the sum of* ——— *which appears to me to be just and reasonable to be paid by him the said* A. M. *to him the said* A. S. *as and for his wages as aforesaid. Given under my hand and seal the* ——— *day of* ——— *in the* ——— *year of the reign of* ———.

D. Warrant of distress for the same.

Westmorland. { To the constable of ———

WHEREAS A. S. *of* ——— *in the said county, husbandman, hath complained unto me* ——— *one of his majesty's justices of the peace in and for the said county, that* A. M. *of* ——— *in the said county, husbandman, hath refused to pay unto him the said* A. S. *the wages justly due unto him for service, in husbandry truly and faithfully performed by him the said* A. S. *to him the said* A. M. [Or, as the case shall be] *And whereas the said* A. M. *having appeared before me in pursuance of my summons for that purpose, hath not proved to me that the said wages have been paid to him the said* A. S. *as aforesaid, and hath not shewed any just cause why the same should not be paid* [Or, *And whereas the said* A. M. *hath been duly summoned by me to shew cause to me why the*

the ſaid wages ſhould not be paid, but he the ſaid A. M. *hath neglected to appear according to the ſaid ſummons, and hath not ſhewed any cauſe as aforeſaid] I therefore the ſaid juſtice, upon due conſideration had thereof, on the ——— day of ——— now laſt paſt, by writing under my hand and ſeal, did thereupon determine and order, that he the ſaid* A. M. *ſhould pay to him the ſaid* A. S. *the ſum of ——— which appeared to me to be juſt and reaſonable to be paid by him the ſaid* A. M. *to him the ſaid* A. S. *as and for his wages as aforeſaid; And whereas it appears to me, that he the ſaid* A. M. *on the ſaid ——— day of ——— now laſt paſt, had due notice of my ſaid order, and that due demand of the ſaid ſum of ——— was then made of him the ſaid* A. M. *by him the ſaid* A. S. *but that he the ſaid* A. M. *did not then pay, nor hath yet paid the ſame, nor any part thereof; Theſe are therefore to command you to make diſtreſs of the goods and chattels of him the ſaid* A. M. *and if within the ſpace of* [*four*] *days next after ſuch diſtreſs by you made, the ſaid ſum of ——— together with the reaſonable charges of taking and keeping the ſaid diſtreſs, ſhall not be paid, that then you do ſell the ſaid goods and chattels ſo by you diſtrained, and out of the money ariſing by the ſale thereof, that you pay the ſaid ſum of ——— unto him the ſaid* A. S. *returning the overplus upon demand, unto him the ſaid* A. M. *the reaſonable charges of taking, keeping, and ſelling the ſaid diſtreſs, being thereout firſt deducted. Given under my hand and ſeal the ——— day of ——— in the ——— year ———.*

E. Complaint of a maſter againſt a ſervant for miſbehaviour on the 20 G. 2. c. 19.

Weſtmorland. BE *it remembred, that this —— day of —— in the year ——* A. M. *of ——— in the county aforeſaid, huſbandman, complaineth and maketh oath, before me* J. P. *eſquire, one of his majeſty's juſtices of the peace in and for the ſaid county, that* A. S. *late of ——— aforeſaid in the county aforeſaid, ſervant in huſbandry to him the ſaid* A. M. *hath in his ſaid ſervice* [or, *employment*] *been guilty of divers miſdemeanors, miſcarriages, and ill behaviour, towards him the ſaid* A. M. *and particularly* [as the caſe ſhall be]; *and thereupon he the ſaid* A. M. *prayeth that juſtice may be done.*

Before me,
J. P.

A. M.

F. Warrant for the ſervant thereupon.

Weſtmorland. } To the conſtable of ——.

WHEREAS *information and complaint hath been made unto me* —— *one of his majeſty's juſtices of the peace, in and for the ſaid county, upon the oath of* A. M. *of* —— *in the ſaid county, huſbandman,* [*artificer, labourer,* or as the caſe ſhall be] *that* A. S. *late of* —— *aforeſaid in the county aforeſaid, ſervant in husbandry* [or as the caſe ſhall be] *to him the ſaid* A. M. *hath in his ſaid ſervice* [or, *emplyment*] *been guilty of divers miſdemeanors, miſcarriages, and ill behaviour, towards him the ſaid* A. M. *and particularly* [as the caſe ſhall be]; *Theſe are therefore to command you forthwith to bring the ſaid* A. S. *before me to anſwer unto the ſaid complaint, and to be further dealt with according to law. Given under my hand and ſeal, the* —— *day of* —— *in the* —— *year of the reign of* ——.

G. Commitment of the ſervant thereupon to the houſe of correction.

Weſtmorland. } To the conſtable of —— in the ſaid county, and to the keeper of the houſe of correction at —— in the ſaid county.

WHEREAS *information and complaint hath been made* —— (the ſame as above, reciting the complaint) *And whereas in purſuance of the ſtatute in that caſe made and provided, I have duly examined the proofs and allegations of both the ſaid parties, touching the matter of the ſaid complaint, and upon due conſideration had thereof, have adjudged and determinad that he the ſaid* A. O. *hath in his ſervice as aforeſaid been guilty of divers miſdemeanors, miſcarriages, and ill behaviour, towards him the ſaid* A. M. *and particularly* [here ſet forth the ſpecial offence or offences]: *Theſe are therefore to command you the ſaid conſtable forthwith to convey the ſaid* A. S. *to the ſaid houſe of correction at* —— *aforeſaid, and to deliver him to the keeper thereof, together with this warrant: And I do hereby command you the ſaid keeper to receive the ſaid* A. S. *into your cuſtody in the ſaid houſe*

houſe of correction, there to remain, and be corrected, and held to hard labour, for the ſpace of one kalendar month [or for a leſſer time] *from the date hereof. And for your ſo doing, this ſhall be your ſufficient warrant. Given under my hand and ſeal, the ——— day of ——— in the ——— year of the reign of ——.*

H. Or otherwiſe he may be puniſhed by abatement of wages, as follows:

THE ſame as above to the end of the adjudication:— *I do therefore hereby order, as a puniſhment for his offence* [or, *offences*] *that the ſaid* A. S. *ſhall abate from his wages to be paid to him by the ſaid* A. M. *the ſum of ——— and do hereby diſcharge the ſaid* A. M. *from the payment of the ſaid ſum of ——— as part of the wages of him the ſaid* A. S. *Given under my hand and ſeal the ——— day of ——— in the ——— year ——.*

I. Or otherwiſe he may be diſcharged, thus:

——— *I do therefore hereby order, as a puniſhment for the ſaid offence* [or, *offences*] *that the ſaid* A. S. *be diſcharged, and do hereby diſcharge him the ſaid* A. S. *from his ſaid ſervice* [or, *employmeent*] *and the ſaid* A. M. *from keeping him the ſaid* A. S. *Given under my hand and ſeal the ——— day of ——— in the ——— year ———.*

K. Complaint of a ſervant againſt the maſter, for ill uſage; on the 20 G. 2. c. 19.

Weſtmorland. BE *it remembered, that this ——— day of ——— in the year ———* A. S. *of ——— in the county aforeſaid, husbandman,* [*labourer*, &c.] *complaineth and maketh oath, before me* J. P. *eſquire, one of his majeſty's juſtices of the peace in and for the ſaid county, that at Michaelmas laſt he the ſaid* A. S. *was hired by* A. M. *of ——— aforeſaid in the county aforeſaid, huſbandman, to be ſervant in husbandry to him the ſaid* A. M. *for the ſpace of ——* [or, as the caſe ſhall be]; *And that he the ſaid* A. S. *did accordingly at Michaelmaſs laſt as aforeſaid enter upon, and afterwards until this preſent time hath continued,*

nued, and doth continue, in the ſaid ſervice [or, *employment*]; *And that he the ſaid* A. M. *during the ſaid ſervice, hath miſuſed him the ſaid* A. S. *and particularly* [here ſet forth the ſpecial offences]: *And thereupon he the ſaid* A. S. *prayeth that juſtice may be done in the premiſſes.*

A. S.

Before me
J. P.

L. Summons of the maſter, on complaint of the ſervant, for ill uſage; on the 20 *G.* 2. *c.* 19.

Weſtmorland. } To the conſtable of ——.

WHEREAS *complaint hath been made unto me —— one of his majeſty's juſtices of the peace in and for the ſaid county, upon the oath of* A. S. *of ——— in the ſaid county, husbandman,* [*labourer,* &c.] *that at Michaelmaſs laſt he the ſaid* A. S. *was hired by* A. M. *of ——— aforeſaid in the ſaid county, husbandman, to be ſervant in husbandry to him the ſaid* A. M. *for the ſpace of ———* [or, as the caſe ſhall be] *and that he the ſaid* A. S. *did accordingly at Michaelmaſs laſt as aforeſaid enter upon, and afterwards until this preſent time hath continued, and doth continue, in the ſaid ſervice* [or *employment*]: *And that he the ſaid* A. M. *during the ſaid ſervice hath miſuſed him the ſaid* A. S. [*refuſed neceſſary proviſion, been guilty of cruelty or other ill treatment,* mentioning the particulars] *Theſe are therefore to require you in his majeſty's name, to ſummon the ſaid* A. M. *to appear before me on —— next, at the houſe of —— in ——— in the ſaid county, at the hour of ——— in the afternoon of the ſame day, to anſwer unto the ſaid complaint. And be you then there to certify what you ſhall have done in the executson hereof. Given under my hand and ſeal the ——— day of ——— in the ——— year ——.*

M. Diſcharge of the ſervant thereupon.

THE ſame as before to the end of the complaint,— *And whereas the ſaid* A. M. *in purſuance of my ſummons for that purpoſe hath appeared before me, to anſwer unto the ſaid complaint, but hath not proved that he is not guilty of the ſaid complaint and charge; but on the contrary it hath been fully and duly proved before me, that he the ſaid* A. M. *hath*

hath miſuſed him the ſaid A. S. *in his ſervice as aforeſaid, and particularly* [here ſet forth the ſpecial offence or offences]; ——— [Or, *And whereas it appears to me upon the oath of* A. C. *conſtable of* ——— *aforeſaid, that he the ſaid* A. C. *by virtue of my precept to him directed, did duly ſummon him the ſaid* A. M. *to appear before me at a reaſonſonable time therein prefixed, to anſwer unto the ſaid complaint, and he the ſaid* A. M. *hath neglected to appear according to the ſaid ſummons*]: *I do therefore hereby order, in purſuance of the ſtatute in that caſe made, that he the ſaid* A. S. *be diſcharged, and do hereby diſcharge him the ſaid* A. S. *from his ſaid ſervice* [or, *employment.*] *Given under my hand and ſeal, the* ——— *day of* ——— *in the year* ———.

Seſſions.

Seſſions, what.

1. THE ſeſſions of the peace is a court of record, holden before two or more juſtices, whereof one is of the *quorum*, for execution of the authority given them by the commiſſion of the peace, and certain ſtatutes and acts of parliament. *Dalt. c.* 185.

Difference between general, quarter, and ſpecial ſeſſions.

2. It ſeems that the *general* ſeſſions, and *quarter* ſeſſions, are not ſynonymous; but that the quarter ſeſſions are a ſpecies only of the general ſeſſions, and that ſuch ſeſſions only are properly called general quarter ſeſſions, which are holden in the four quarters of the year, in purſuance of the ſtatute of the 2 *H.* 5. and that any other ſeſſions holden at any other time for the general execution of the juſtices authority, which by the ſaid ſtatute they are authorized to hold oftener than at the times therein ſpecified, if need be, may be properly called *general* ſeſſions, and that thoſe holden on a ſpecial occaſion for the execution of ſome particular branch of their authority, may properly be called *ſpecial* ſeſſions. 2 *Haw.* 42.

At what time the ſeſſions ſhall be kept.

3. By the 12 *R.* 2. *c.* 10. The juſtices ſhall keep their ſeſſions in every quarter of the year at leaſt, and by three days, if need be; on pain of being puniſhed according to the diſcretion of the king's council, at the ſuit of every man that will complain.

And by the 2 *H.* 5. *ſt.* 1. *c.* 4. the particular time in every quarter of the year ſhall be as follows; to wit, in the

firſt week after the feaſt of St. *Michael*, in the firſt week after the *Epiphany*, in the firſt week after the clauſe of *Eaſter*, and in the firſt week after the tranſlation of St. *Thomas* the martyr; and more often if need be.

Except in *Middleſex*; where the juſtices ſhall keep their ſeſſions twice in the year at leaſt; and more often (if need be) for any riot or forcible entry. 14 *H.* 6. *c.* 4.

The ſtrict, regular expoſition of the aboveſaid ſtatute of the 2 *H.* 5. is, that if the feaſt day fall upon the *ſunday*, the ſeſſions ſhall be held in the week following, and not the ſame week. 2 *H. H.* 49.

Yet it is very plain, that the quarter ſeſſions are variouſly held in ſeveral counties, ſome at one day, and ſome at another, yet it hath been ruled, that theſe are each of of them good quarter ſeſſions within the ſeveral acts that relate to quarter ſeſſions; for theſe acts, eſpecially the 2 *H.* 5. is only directive and in the affirmative, and therefore, though the ſeſſions are held on another day, according to the general direction of the 12 *R.* 2. yet they are quarter ſeſſions. 2 *H. H.* 50.

Where the ſeſſions ſhall be holden.

4. There is no determination by any ſtatute, of any particular place for the ſeſſions to be kept, ſo it be within the county. And if a place within the county be incorporated, and have juſtices of its own, yet the ſame remains part of the county, and the juſtices of the county may notwithſtanding hold their ſeſſions there, although it may be that they ſhall not intermiddle with matters ariſing there, ſave only ſuch as happen in their ſeſſions, or with relation thereunto. *Dalt. c.* 185.

Precept to ſummon the ſeſſions.

5. And from hence it ſeems to follow, that any two ſuch juſtices may direct their precept under their teſte to the ſheriff, for the ſummons of the ſeſſions, thereby commanding him to return a grand jury before them, or their fellow juſtices at a certain day and place, and to give notice to all ſtewards, conſtables, and bailiffs of liberties, to be preſent and do their duties at ſuch day and place, and to proclaim in proper places, throughout his bailiwick, that ſuch ſeſſions will be holden at ſuch day and place, and to attend there himſelf to do his duty. 2 *Haw.* 41.

And ſuch precept ſhould bear teſte, or be dated, fifteen days before the return, and ought forthwith to be delivered to the ſheriff, to the end he may have ſufficient time to proclaim the ſeſſions, to ſummon and return the ſeveral juries, and to warn all officers and others that have buſineſs there, to attend. *Neſſ.* Introduct. 35.

And

And it is ſaid that ſuch a precept by any two juſtices cannot be ſuperſeded by any of their fellows, but only by writ out of chancery. 2 *Haw.* 41.

But the ſeſſions without a previous ſummons is good, but then no man ſhall loſe any thing for default of his appearance there, becauſe no man had notice of their ſitting. *Lamb.* 381. Nor can any one be compelled to appear there. L. *Raym.* 1238.

Mr. *Lambard* puts a caſe from Mr. *Marrow*, that if two or more juſtices appoint the ſeſſions to be holden in one town, and ſo many more appoint a ſeſſions in another town the ſame day, and holds they may be ſo held, and that the preſentments in both are good; but that appearance at one, is a diſcharge of ſervice at the other. But it may be well queſtioned whether they are not both void; for they make two courts of that which ought to be intire and but one: for it doth not appear that the juſtices are required or enabled to hold more than one ſeſſions at a time, and ſo their authority being equal, and ſeeing no preference can be made by the priority of time, or nature of the ſervice, they may be taken to be both void. However the juſtices, by whoſe forwardneſs ſuch diviſion happens, or on whom ſuch miſcarriage is chargeable, are puniſhable for the ſame by information and fine, or putting out of the commiſſion, as the cauſe ſhall require. *Dalt. c.* 185.

6. The perſons who ought to appear at theſe ſeſſions are as follows: Perſons who are to appear there.

(1) The *juſtices of the peace*; theſe without doubt are compellable to appear at the ſeſſions, for without their appearance the ſeſſions cannot be holden. *Dalt. c.* 185.

But a juſtice ought not to join in an order at ſeſſions wherein himſelf is concerned, nor ought his name to be in the caption. An order was quaſhed for that reaſon. 2 *Salk.* 607.

(2) The *cuſtos rotulorum*, who hath cuſtody of the rolls of ſeſſions, ought (by the commiſſion) to be there by himſelf, or by his deputy, who is the clerk of the peace. *Dalt. c.* 185.

(3) The *ſheriff* alſo, by virtue of the commiſſion, by himſelf or his deputy; to receive the fines, to return jurors, to execute proceſs, and what elſe to his office doth appertain. *id.*

(4) All *coroners*. id.

(5) The *conſtables of hundreds* (that is, high conſtables) and all other officers to whom any warrant hath been directed, in order to make return thereof. *id.*

(6) All

(6) All *bailiffs of hundreds and liberties*, in reſpect they are bound to give an account of all ſeſſions proceſs. *id.*

(7) The *gaoler*; to bring thither his priſoners, and to receive ſuch as may be committed. *Dalt. c.* 185.

(8) The *keeper of the houſe of correction*, to give in a kalendar and account of perſons in his cuſtody. *id.*

(9) All jurors returned by the ſheriff, by virtue of the aforeſaid precept. And the jurors not appearing according to their ſummons, are puniſhable by loſs of iſſues, which uſually make part of the eſtreats of ſeſſions. *id.*

(10) All perſons bound by *recognizance* to anſwer, or to proſecute and give evidence. *id.*

Freedom of acceſs to the ſeſſions.

7. And all perſons may freely attend at the ſeſſions for the advancement of publick juſtice, and for the ſervice of the king. And to this end they are (as it were) invited thither by a certain freedom of acceſs, and by protection from common arreſt; a thing that is incident to every court of record, and without which, juſtice would be greatly hindered. So that if a man come voluntarily to the ſeſſions, either to prefer a bill of indictment, or to give information againſt another, or to tender a fine upon an indictment touching himſelf, or do come compelled to make appearance for ſaving his recognizance, and be arreſted by the ſheriff upon common and original proceſs, in his coming thither, or during his tarrying there; it ſeemeth (Mr. *Lambard* ſays) that (upon examination of the matter under his oath) he ſhall be diſcharged thereof by the privilege of this court, even as it is uſed in the higher courts at *Weſtminſter*. Lamb. 402.

But Mr. *Hawkins* puts it more doubtfully, ſaying, It is queſtioned whether the ſeſſions, as alſo all courts of record, may not diſcharge any perſon arreſted, during his journeying to or from ſuch courts, or neceſſary attendance there, by proceſs from any other court: However it ſeems to be agreed, that any ſuch court may diſcharge a perſon who ſhall be ſo arreſted in the face of it. 2 *Haw.* 5.

T. 7 *G.* 2. It ſeemeth to have been agreed in the argument upon Col. *Pitt*'s caſe (which was an arreſt in his return from parliament) that not only in the high court of parliament, but alſo in the inferior courts, the parties to the ſuit, and alſo the witneſſes, are protected in going, continuing and returning. And this returning hath never been very nicely ſcanned, ſo as to require a man to go the direct road: and the protection is not forfeited by the plea of *going out of the way*, becauſe it may be the party went to buy a horſe, victuals, or other neceſſaries for his journey. Neither

is

is the law ſo ſtrict in point of time, as to require a perſon to ſet out immediately after the trial is over; and for that was cited the caſe of *Hatch* and *Bliſſet*, T. 13 *An.* She had a trial at *Wincheſter* aſſizes, which was over on *Friday* at four in the afternoon: ſhe ſtaid there till after dinner on *Saturday*; and in the evening at ſeven was arreſted going home, to *Portſmouth*, which is twenty miles: and the court held, that ſhe ought to be diſcharged, her protection not being expired, and a little deviation or loitering would not alter it. *Str.* 987.

But where a man is arreſted by proceſs out of the courts at *Weſtminſter*, it doth not ſeem that the juſtices of the peace (unleſs the arreſt is made in the ſeſſions) have power to diſcharge him; but on application to the court from whence the proceſs iſſued, ſuch court probably may diſcharge him, and puniſh the perſon who made the arreſt.

Who ſhall act in the ſeſſions as ſolicitor.

8. By the 22 *G.* 2. *c.* 46. No perſon ſhall act as ſolicitor, attorney, or agent, or ſue out any proceſs at any general or quarter ſeſſions, either with reſpect to matters of a criminal or civil nature, unleſs he is admitted and inrolled according to law; on pain of 50 *l.* to him who ſhall ſue in 12 months, with treble coſts: And if any attorney ſhall permit any perſon to make uſe of his name in the ſaid court, he ſhall in like manner forfeit 50 *l.*

And no clerk of the peace, under ſheriff, or their deputies, ſhall act as ſolicitor, attorney, or agent, or ſue out any proceſs at ſuch ſeſſions, on the like pain of 50 *l.*

The ſeſſions may do what two juſtices may.

9. Where authority is given to two juſtices to do any act, the ſeſſions may do it, in all caſes, except where appeal is directed to the ſeſſions. L. *Raym.* 426.

Juſtices may bind over for offences cognizable at ſeſſions.

10. Juſtices may iſſue their warrants for apprehending perſons charged of crimes within the cognizance of the ſeſſions, and bind them over to appear there, although the offender be not yet indicted. 1 *H. H.* 579. But as this practice is founded rather upon long uſage than any expreſs law; it ſeemeth better, in ordinary caſes (not amounting to felony) to leave a man to the common proceſs of the court, in caſe of an indictment to be found againſt him: And if no indictment ſhall be found, it ſeemeth hard to deprive a man of his liberty, when he hath been in no fault.

Seſſions to proceed by indictment.

11. If juriſdiction be given to the ſeſſions, to hear and determine, and doth not ſay by information, this ſhall be by indictment and not upon information. *Dalt. c.* 191.

Need not give their reaſons.

12. The ſeſſions are not obliged to give any reaſon of their judgment in the orders they make, no more than any other of the courts of law. 2 *Salk.* 607.

13. By

Orders may be altered the ſame ſeſſions.

13. By *Holt* Ch. J. The ſeſſions is all as one day, and the juſtices may alter their judgments, at any time whilſt it continues. 2 *Salk.* 606.

Court equally divided.

14. In the caſe of *Thornby* and *Fleetwood*, *T.* 6 *G.* (which was upon a writ of error in the king's bench brought againſt a judgment given in the court of common pleas) the court was equally divided; whereupon it was conſidered what was further to be done. And after ſeveral expedients, which were judged impracticable, the parties at laſt conſented that the judgment ſhould be affirmed, ſo that the caſe thereupon might come before the houſe of lords for a final determination. And *Pratt* Ch. J. delivered the opinion of the court thus: The plaintiffs in error move us for an affirmance; as to that you ſee the court is divided, and there can be no rule: but in this caſe, becauſe the party againſt whom it is to be affirmed, is deſirous and willing it ſhould be ſo, we are all of opinion that upon his conſent the judgment of the common pleas may be affirmed. But leſt this be brought in future ages as a precedent of an affirmance upon a diviſion, we direct the officer to make the rule ſpecial in this caſe, on recital of the difference in opinion amongſt the judges, and the conſent of the party. *Str.* 383, 4.

T. 8 *G.* 2. *K.* and the juſtices of *Weſtmorland.* Order of two juſtices of the borough for removing a poor family; appeal to the ſeſſions of the county, at which the juſtices were equally divided; ſo no determination was made, nor the appeal adjourned. A *mandamus* was directed to all the juſtices of the county in general, to proceed on the appeal. And it was ſaid, that the juſtices ought in this caſe to have adjourned the appeal, or continued it over to a ſubſequent ſeſſions, till by the coming of more juſtices it might have been determined. *Seſſ. C. V.* 2. 193.

Or if the court ſhall be ſtill divided, as ſo it may happen in ſmall counties or towns corporate where the juſtices are but few, or where the number is reduced by reaſon of the reſt being intereſted; in order that the cauſe may not be hung up for ever, it may be adviſable (according to the courſe preſcribed in the caſe of *Thornby* and *Fleetwood* abovementioned) for the court, by conſent of the parties, to affirm or quaſh, and thereupon ſtate the caſe ſpecially, to be laid before the judges of aſſize, or rather before the court of king's bench; for the judges of aſſize are oftentimes ſufficiently employed with the proper buſineſs of the circuit, without being importuned with theſe matters of inferior conſequence.

15. A judge of *niſi prius* by conſent of parties may make a rule to refer a cauſe; but the ſeſſions cannot do ſo, tho' by conſent. They may refer a thing to another to examine, and make report to them for their determination, but cannot refer a thing to be determined by the other. 2 *Salk.* 477. Seſſions cannot refer.

16. It ſeemeth certain, that the ſeſſions hath no authority to amerce any juſtice, for his non-attendance at the ſeſſions, as the judges of aſſize may for the abſence of any ſuch juſtice at the gaol delivery: for it is a general rule, that *inter pares non eſt poteſtas*, it being reaſonable rather to refer the pnniſhment of perſons in a judicial office, in relation to their behaviour in ſuch office, to other judges of a ſuperior ſtation, than to thoſe of the ſame rank with themſelves. And therefore it ſeems to have been holden, that if a juſtice at the ſeſſions, who is not of the *quorum*, ſhall uſe ſuch expreſſions towards another who is of the *quorum*, for which if he were a private perſon he might be committed or bound to his good behaviour, yet the ſeſſions hath no authority to commit him, or to bind him to his good behaviour: And yet it ſeems to be agreed, that if a juſtice give juſt cauſe to any perſon to demand the ſurety of the peace againſt him, he may be compelled by any other juſtice to find ſuch ſecurity; for the puhlick peace requires an immediate remedy in all ſuch caſes. 2 *Haw.* 41, 42. How far the ſeſſions hath power over its own members.

17. The ſeſſions may proceed to outlawry in caſes of indictments found before them; and that, by the common law: and in caſes of popular actions, by the ſtatute of the 21 *J. c.* 4. But they cannot iſſue a *capias utlagatum*, but muſt return the record of the outlawry into the king's bench, and there proceſs of *capias utlagatum* ſhall iſſue. 2 *H. H.* 52. *Lamb.* 521. Whether they may iſſue a capias utlagatum.

But by the 12 *Co.* 103. They that have power to award proceſs of outlawry, have alſo a power to award a *capias utlagatum*, as incident to their authority and juriſdiction.

18. Generally, the ſeſſions cannot award an attachment for contempt in not complying with their orders; but the ordinary and proper method is by indictment. *H.* 8 *G.* 2. *K.* and *Bartlett. Seſſ. C. V.* 2. 176. Whether they may award an attachment.

19. Generally, it is ſaid, that the juſtices are not puniſhable for what they do in ſeſſions. *Stam.* 173. Unleſs there be ſome manifeſt act of oppreſſion, or wilful abuſe of power. 2 *Barnardiſt.* 249, 250. Juſtices not puniſhable for what is done in ſeſſions.

20. The manner of proceeding at the ſeſſions, is as follows: Firſt, the juſtices being met, the uſual courſe is with three oyes to proclaim the ſeſſions, and then read the commiſſion of the peace. *Dalt. c.* 185. Manner of proceeding in ſeſſions. Commiſſion read

21. Then

Grand jury ſworn.

21. Then the grand jury are called and ſworn, and the charge given to them. *id.*

Taking oaths.

22. If there be any who are to take their oaths, in order to qualify them for offices, this muſt be done between the hours of 9 and 12 in the forenoon, and not otherwiſe. 25 *C.* 2. *c.* 2. *ſ.* 2.

Acts to be read.

23. The king's proclamation againſt profaneneſs and immorality is alſo to be read; and likewiſe there are divers acts of parliament required to be read in the ſeſſions, as the 5 *El. c.* 1. againſt popery, and the riot act 1 *G. c.* 5. and the black act 9 *G. c.* 22. And the 11 & 12 *W. c.* 15. about ale meaſures; 30 *C.* 2. *c.* 3. about burying in woollen; are required to be given in charge at the ſeſſions. And the 4 & 5 *W. c.* 24. 7 & 8 *W. c.* 32. 3 & 4 *An. c.* 18. and 3 *G.* 2. *c.* 25. concerning jurors, are to be read in *Midſummer* ſeſſions yearly. And the 2 *G.* 2. *c.* 24. againſt bribery and corruption in elections of members of parliament is to be read at every *Eaſter* ſeſſions.

Recognizances to give evidence called.

24. Then the recognizances may be called, eſpecially ſuch as are to proſecute and give evidence, that ſo bills may be drawn and prepared. *Dalt. c.* 185.

Trying for felonies at the ſame ſeſſions.

25. Although it is in many places uſed, to try a man for felony the ſame ſeſſions in which the indictment is found, yet it ſeems highly reaſonable, if the priſoner deſire it to be deferred, and ſhew cauſe probable, to defer it. For that, 1. The ſeſſions are holden oftner than the aſſizes. 2. The ſpeedy trials ſeem to be in favour of the priſoner, and *volenti non fit injuria.* 3. If a traverſe upon an indictment of nuſance be not triable the ſame ſeſſions that it is joined, but a man ſhall have time to provide for it; much more in matter of life, where uſually the party is in priſon, and may well be ſuppoſed leſs able to provide for it, and in the nature of it requires greater conſideration. *Dalt. c.* 185.

And, in another place, it is ſaid, that it is made a doubt, whether a trial can be had of ſuch a felon the ſame ſeſſions he pleads, unleſs he conſents to it. *Dalt. c.* 185.

Bills before the grand jury.

26. The bills being ready, the parties bound over for that purpoſe are ſworn to give evidence upon the bills; and the courſe is, to bid the evidence go with the grand jury, where they conſider of the bill, and either find it or not find it, and then return it. *id.*

Other buſineſs whilſt the grand jury are gone out; ſuch as motions, appeals, recognizances.

27. Whilſt the jury is gone out of court, the uſual way is to proceed upon motions and orders touching ſettlements, baſtardy, nuſances, and the like; and to call perſons bound over to the peace or good behaviour, but it may not be beſt to diſcharge them till the end of the ſeſſions, becauſe bills may be preferred againſt them. *id.*

28. Upon

28. Upon appeals to be made to the ſeſſions againſt judgments or orders, the juſtices ſhall cauſe any defect of form in ſuch original judgments or orders, to be rectified and amended, and then ſhall proceed upon the merits. 5 *G.* 2. *c.* 19. *ſ.* 1. Errors in form to be amended.

29. Mr. *Shaw* (Tit. *Seſſions*) ſays, no indictment for a nuſance ſhall be quaſhed or diſcharged, unleſs two juſtices do certify to the court upon their own view, either by certificate under their hands, or in perſon, that the nuſance is removed; and for this he quotes 3 *Cro.* 584. *Layton*'s caſe. But that caſe only mentions a certificate in general, and the certificate in that caſe was not a certificate of two juſtices, but of ſeveral inhabitants adjoining; and it ſhould ſeem that the ſeſſions may be well ſatisfied of ſuch removal of a nuſance, by other evidence, as well as by that of two juſtices. Certificates of nuſances removed.

30. Then may be called the perſons bound by recognizance at the laſt ſeſſions, to proſecute their traverſes at the preſent ſeſſions. For if a perſon indicted of a treſpaſs or other miſdemeanor, do appear, and ſhall plead not guilty, and traverſe the indictment, he ſhall enter into recognizance to proſecute his traverſe at the next quarter ſeſſions. For in *Bumſtead*'s caſe, 11 *C.* The whole court was of opinion, that juſtices of the peace may not inquire, try, and determine civil offences, in one and the ſame day; for the party ought to have a convenient time to provide for the trial. *Cro. Car.* 448. Traverſes tried.

And on the trial of a traverſe, the defendant muſt appear in the court, at the bar, in his proper perſon; and then the indictment is read to the jury; and the proſecutor and his witneſſes are called to give evidence, and are heard; and if the defendant is found guilty, the court ſets a fine upon him adequate to the offence, or other puniſhment as the law directs. *Crown Cir.* 50, 51.

In caſe of treſpaſs and aſſault, the court frequently recommends the defendant to talk with the proſecutor, that is, to make him amends for the injury done him; and if the proſecutor comes and acknowledges a ſatisfaction received, the court will ſet a ſmall fine on the defendant, as 3*s.* 4*d.* or 12*d.* *Cro. Cir.* 52.

Sometimes the proſecutor and defendant agree, before the defendant pleads to the indictment; and then the defendant comes into court in his proper perſon, and pleads guilty to the indictment; and upon proving, by a ſubſcribing witneſs, a general releaſe executed by the proſecutor, the defendant ſubmits to a ſmall fine, ſuch as the court is pleaſed to impoſe. *Cro. Cir.* 52.

There are frequent proſecutions at the Seſſions for trifling aſſaults, in which caſe it is adviſable for a defendant not to put himſelf to the expence of trying the indictment; but to give notice to the proſecutor, that he intends to plead guilty to the indictment; in which caſe the proſecutor attends the court with his witneſſes, and gives evidence of the nature of the offence; and then the court proceeds to fine the defendant for his miſbehaviour towards the proſecutor: But before that is done, the court will admit the defendant to call ſuch witneſſes as he deſires, and will examine them by way of mitigation. *Cro. Cir.* 54.

Trial for petit larceny and other felonies.

31. And becauſe the arraignment and trial of priſoners is a great part of the buſineſs of the ſeſſions, I will take notice of ſome parts thereof, and proceedings thereupon.

Arraignment.

Towards the end of the ſeſſions, when it appears what bills are come in againſt the priſoners, the gaoler being called to ſet his priſoners to the bar, and the crier being called to make a bar, that is, to diſpoſe of the company, that a way be made open from the court to the priſoners, that the court, jury, and priſoners may ſee each other, one of the priſoners, is called to; *A. B.* hold up thy hand. *Dalt. c.* 185.

Holding up the hand.

Yet it is not neceſſary that he hold up his hand at the bar, or be commanded ſo to do; for this is only a ceremony, for making known the perſon of the priſoner to the court, and if he anſwers that he is the ſame perſon, it is all one. 2 *Haw.* 308.

Guilty or not guilty.

Then he is acquainted with the effect of the charge laid againſt him, Thou *A. B.* ſtandeſt indicted, by the name of *A. B.* for that thou ——— (and ſo recite the indictment). How ſayeſt thou, *A. B.* Art thou guilty of this felony and petit larceny whereof thou ſtandeſt indicted, or not guilty? *Dalt. c.* 185.

Mute.

If he make no anſwer at all, and will not plead, it is beſt to aſk him three or more times, and to tell him the danger of ſtanding mute, and the grievouſneſs of the judgement of the *peine fort & dure*; and yet if he will ſtand mute, nothing more can be done concerning him till judgment, but to record it. *id.*

But if it be for petit larceny only, he ſhall not be put to his *peine fort & dure*, as in caſe of grand larceny, but he ſhall have the like judgment as if he had confeſſed the indictment. 2 *Haw.* 329.

If he pleads privilege, it hath been adjudged, that where proceedings are merely at the ſuit of the king, as upon indictment, or upon information brought by the attorney general, no privilege ſhall be allowed; but where the proceed-

ceedings are at the ſuit of the king and of the party, as in caſe of a common informer, there the defendant may have his privilege. 1 *Lutw.* 62.

If he anſwer that he is guilty, then the confeſſion is recorded, and no more done till judgment. *Dalt. c.* 185. Confeſſion.

But if he ſay, not guilty, he is then aſked; how wilt thou be tried? *Dalt. c.* 185. Trial by the country.

Which was formerly a very ſignificant queſtion, though it is not ſo now; becauſe antiently trial by battel, and trial by ordeal was uſed, as well as by the country, or a jury.

Therefore it is now uſually anſwered, By god and the country. *Dalt. c.* 185.

Mr. *Hawkins* obſerves, that every perſon at the time of his arraignment, ought to be uſed with all the humanity and gentleneſs which is conſiſtent with the nature of the thing, and under no other terror or uneaſineſs than what proceeds from a ſenſe of his guilt, and the misfortune of his preſent circumſtances; and therefore ought not to be brought to the bar in a contumelious manner, as with his hands tied together, or any other mark of ignominy and reproach; nor even with fetters on his feet, unleſs there be ſome danger of a reſcous or eſcape. 2 *Haw.* 308. Humanity towards the priſoner.

And the court ought to exhort him to anſwer without fear, and to acquaint him that he ſhall have juſtice done to him. 2 *Inſt.* 316.

Next, the priſoner having put himſelf upon his country, the proſecutors are called on their recognizances, to give evidence. *Dalt. c.* 185. Witneſſes called.

Then the jury are called on their pannel, thus, You good men that are returned and impanelled, to try the iſſue joined between our ſovereign lord the king and the priſoner at the bar, anſwer to your names. *Dalt. c.* 185. Jury called.

Which done, and they appearing a full jury, a proclamation is made; If any can inform the king's attorney, or this court, of any treaſons, murders, felonies, or other miſdemeanors againſt *A. B.* the priſoner at the bar, let them come forth, for the priſoners ſtands upon his deliverance. *Dalt. c.* 185. Proclamation.

Then it is ſaid to the priſoner, You priſoner at the bar, the perſons that you ſhall now hear called, are to paſs upon your trial (upon your life and death, if it is a capital offence); if you will challenge them, or any of them, you muſt challenge them as they come to the book to be ſworn, and before they be ſworn. *Dalt. c.* 185. Challenge.

Jury ſworn. Then call the foreman of the jury, and ſay unto him, Lay your hand on the book, and look upon the priſoner; You ſhall well and truly try, and true deliverance make, between our ſovereign lord the king, and the priſoner at the bar, whom you ſhall have in charge, and a true verdict give according to your evidence: So help you god.

Then call the ſecond, and ſo ſwear him in like manner, and ſo on to 12, and neither more nor leſs. 2 *H. H.* 293.

Jury charged. Then count them 12, and ſay, You good men that are ſworn, you ſhall underſtand, that *A. B.* now priſoner at the bar, ſtands indicted, for that he ——— (and ſo recite the indictment): To which indictment he hath pleaded not guilty, and for his trial hath put himſelf upon god and the country, which country you are; ſo that your charge is, to inquire whether he be guilty of the felony or petit larceny whereof he ſtands indicted, or not guilty: If you find him guilty, you ſhall ſay ſo, and inquire what goods and chattels he had at the time of the ſaid felony and petit larceny committed, or at any time ſince: (Or, if it be for felony above petit larceny,—then, what goods and chattels, lands and tenements he had at the time of the ſaid felony committed, or at any time ſince:) If you find him not guilty, you ſhall inquire, whether he did fly for it, and if you find that he fled for it, you ſhall enquire what goods and chattels he had at the time of ſuch flight. If you find him not guilty, and that he did not fly for it, you ſhall ſay ſo, and no more; and ſo hear your evidence. 2 *H. H.* 293, 294. *Dalt. c.* 185.

Witneſſes ſworn. Then call the witneſſes, and ſwear them, one by one, thus: *The evidence that you ſhall give between our ſovereign lord the king, and the priſoner at the bar, ſhall be the truth, the whole truth, and nothing but the truth: So help you god.*

Witneſſes for the priſoner. When the witneſſes for the king have been examined, if the priſoner deſires that any witneſſes ſhould be examined for him, they muſt be examined alſo on oath.

Priſoner not to have counſel. On trials of this nature, the priſoner ſhall not have counſel allowed to him, unleſs a point of law ariſe, proper to be debated; nor a copy of the indictment. 2 *Haw.* 400, 402.

But in offences under felony, a defendant may be heard by his counſel. *Wood. b.* 4. *c.* 5.

Court to be of counſel with him. Otherwiſe, the court is to be of counſel with the priſoner, and ought to adviſe him for his good, and not take advantages too ſtrictly againſt him. *Dalt. c.* 185.

When

When the priſoner hath done, and hath been heard all that he hath to ſay in his defence, the evidence is ſummed up by the court to the jury. And if they cannot agree on their verdict at the bar, a bailiff muſt be ſworn to keep the jury, thus; *You ſhall ſwear that you ſhall keep this jury, without meat, drink, fire, or candle; you ſhall ſuffer none to ſpeak to them, neither ſhall you ſpeak to them yourſelf, but only to aſk them whether they are agreed: So help you god.* id. Evidence ſummed up.

The jury coming back, the priſoner is brought to the bar; then the jury is called; they appearing, ſay, Set *A. B.* to the bar; Who being there, ſay, Look upon the priſoner; how ſay you, is *A. B.* guilty of the felony (or as the caſe is) whereof he ſtands indicted, or not guilty? If they ſay, not guilty, bid him down upon his knees. If they ſay, guilty; record it, and bid him be taken away. Then ſay, hearken to the verdict as the court hath recorded it; You ſay, *A. B.* is guilty [or, is not guilty] of the felony whereof he ſtands indicted. id. Verdict.

Then make a proclamation and ſay, All manner of perſons keep ſilence, whilſt judgment is given againſt the priſoner at the bar, upon pain of impriſonment. Then ſet the priſoner to the bar, and give the ſentence. *id.* Judgment.

32. Where the ſeſſions is adjourned, the ſtile of the ſeſſions ought not to run *at ſuch a ſeſſions held by adjournment*; but the original meeting of the ſeſſions ought to be ſet forth, and that it was continued from thence to ſuch further time by adjournment. *Str.* 832, 865. Adjournment of the ſeſſions.

But ſuch adjournment ought not to be beyond the time of meeting of the next quarter ſeſſions. As in the caſe of the *King* and *Grince*, *T.* 4 *G.* An indictment was found before the juſtices for the county of *Lincoln*, againſt a conſtable for refuſing to obey an order of the juſtices; and the defendant was tried, convicted, and had judgment given againſt him, at a general ſeſſions held the 3d day of *May* (which was after the *Eaſter* ſeſſions began) by the adjournment of the *Epiphany* ſeſſions: But by the court of king's bench the judgement was reverſed; becauſe the juſtices cannot continue one general ſeſſions to a day ſubſequent to the time appointed by the 2 *H.* 5. *c.* 4. for the holding another original ſeſſions. *Vin.* Seſſ. W. 7.

33. By the 12 *R.* 2. *c.* 10. The juſtices ſhall take for their wages 4*s.* the day for the time of their ſeſſions, and their clerk 2*s.* of the fines and amerciaments, riſing and coming of the ſame ſeſſions, by the hands of the ſheriffs. And the lords of franchiſes ſhall be contributory to the ſaid wages, after the rate of their part of fines and amerciaments. Wages of the juſtices, and eſtreats.

But no duke, earl, baron, or banneret, ſhall take any wages. 14 *R.* 2. *c.* 11.

And the eſtreats of the juſtices ſhall be doubled, and the one part delivered by them to the ſheriff, to levy the money thereof riſing, and thereof to pay the juſtices their wages by the hand of the ſheriff, by indenture betwixt them thereof to be made. 14 *R.* 2. *c.* 11.

Fees in ſeſſions. 34. The fees in ſeſſions for traverſing, trying, or diſcharging indictments, diſcharging recognizances of the peace and good behaviour, and the like, do vary according to the cuſtom of the country; and in that caſe the cuſtom of the place is to be obſerved. *Dalt. c.* 41.

By *Holt* Ch. J. The court cannot commit for non-payment of fees; for if there is right, there is remedy; and *indebitatus aſſumpſit* will lie, if the fee is certain; if uncertain, *quantum meruit*. L. Raym. 703.

Precept to ſummon the ſeſſions.

Weſtmorland. J. P. *and* K. P. *eſquires, juſtices of our ſovereign lord the king, aſſigned to keep the peace in the county of* ——— *aforeſaid, and alſo to hear and determine divers felonies, treſpaſſes, and other miſdemeanors committed in the ſaid county, and one of us af the quorum; To the ſheriff of the ſame county, greeting: On the behalf of our ſaid ſovereign lord the king, we command you, that you omit not, by reaſon of any liberty within your county, but that you enter therein, and that you cauſe to come before us, or others, juſtices aſſigned to keep the peace in the ſaid county, and alſo to hear and determine divers felonies, treſpaſſes, and other miſdemeanors in the ſaid county committed, on* ——— *the* ——— *day of* ——— *now next enſuing, at the hour of ten in the forenoon of the ſame day, at* ——— *in the ſaid county, 24 good and lawful men of the body of the county aforeſaid, then and there to enquire, preſent, do and perform, all and ſingular ſuch things, which on the behalf of our ſaid ſovereign lord the king ſhall be injoined them: Alſo that you make known to all coroners, keepers of gaols and houſes of correction, high conſtables, and bailiffs of liberties, within the county aforeſaid, that they be then there to do and fulfil thoſe things which by reaſon of their offices ſhall be to be done: Moreover, that you cauſe to be proclaimed through the ſaid county in proper places the aforeſaid ſeſſions of the peace to be held at the day and place aforeſaid: And do you be then there, to do and execute thoſe things*

things which belong to your office: And have you then there as well the names of the jurors, coroners, keepers of gaols, and of houſes of correction, high conſtables, and bailiffs aforeſaid, as alſo this precept. Given under our ſeals at A. *in the county aforeſaid, the ——— day of ——— in the ——— year of the reign of* ———.

When the ſheriff hath received this precept, he muſt direct ſeveral warrants to the ſeveral bailiffs of hundreds and liberties, containing in them the ſubſtance of the ſaid precept.

The ſtile of the ſeſſions.

Weſtmorland. THE *general quarter ſeſſions of the peace, holden at ——— in and for the ſaid county, on the ——— day of ——— in the ——— year of the reign of our ſovereign lord* George *the third, of* Great Britain, France, *and* Ireland, *king, defender of the faith, and ſo forth, before* J. P. *and* K. P. *eſquires, and others, juſtices of our ſaid ſovereign lord the king, aſſigned to keep the peace in the ſaid county, and alſo to hear and determine divers felonies, treſpaſſes, and other miſdemeanors in the ſaid county committed, and of the quorum, and ſo forth.*

Condition of a recognizance to appear and give evidence at the ſeſſions, in caſe where the king is a party.

THE *condition of this recognizance is ſuch, that if the abovebound* A. W. *ſhall perſonally appear at the next general quarter ſeſſions of the peace, to be holden at ——— in and for the county of ——— and then and there give ſuch evidence as he knoweth, againſt ——— concerning his felonious taking and carrying away ——— the property of ——— and do not depart thence without leave of the ſaid court, then this recognizance to be void.*

Subpœna to give evidence, in caſe where the king is not party.

GEORGE *the third ——— To* A. W. B. W. *and* C. W. *of ——— yeomen, greeting. We command you, and every of you, that all buſineſs being laid aſide, and all excuſes*

euſes ceaſing, you do in your proper perſons appear before our juſtices aſſigned to keep our peace in the county of —— and alſo to hear and determine divers felonies, treſpaſſes, and other miſdemeanors in our ſaid county committed, at the ſeſſion of the peace to be holden at —— in and for the ſaid county, on —— the —— day of —— now next enſuing, at the hour of ten in the forenoon of the ſame day, to teſtify all and ſingular thoſe things which you, or any of you, ſhall know, in a certain appeal now depending between the churchwardens and overſeers of the poor of the pariſh of — appellants, and the churchwardens and overſeers of the poor of the pariſh of —— removants, touching and concerning the removal of A. P. *from the ſaid pariſh of ——* [Or, in caſe where the king is a party] *—— to teſtify the truth and give evidence on our behalf, againſt* A. O. *in a caſe of treſpaſs and aſſault] And this you and every of you are in no wiſe to omit, under the penalty of* 10l. *for you and every of you. Witneſs* J. P. *eſquire, the — day of ——.*

Note; There may be four witneſſes put in one *ſubpœna*.

A *ſubpœna* ticket for a witneſs.

MR. A. W. *By virtue of a writ of* ſubpœna, *to you and others directed, and herewith ſhewn unto you, you are required perſonally to be and appear at the next general quarter ſeſſions of the peace to be holden at —— in and for the county of —— to teſtify the truth according to your knowledge in a certain appeal now depending, between the churchwardens and overſeers of the poor of the pariſh of —— appellants, and the churchwardens and overſeers of the poor of the pariſh of —— removants, concerning the removal of* A. P. *from the ſaid pariſh of —— to the ſaid pariſh of —— on the part of the ſaid appellants: And herein you are not to fail, on pain of* 10l. *Dated the — day of —— in the —— year. ——.*

Sewers.

BY the 23 *H.* 8. *c.* 5. Commiſſions of ſewers ſhall be iſſued, in all parts of the realm, where need ſhall require.

And by the 13 *El. c.* 9. For one year after the expiration of a commiſſion of ſewers, the juſtices of the peace, or ſix of them, (2 *Q.*) may execute the powers of the ſaid commiſſion, unleſs a new commiſſion ſhall be iſſued in the mean time.

But as the power and authority of theſe commiſſioners of ſewers is not general enough to fall in with the deſign of this book, I ſhall chuſe to refer thoſe whom it may particularly concern, to the ſtatutes at large which treat of this title; namely,

23 *H.* 8. *c.* 5.
25 *H.* 8. *c.* 10.
3 & 4 *Ed.* 6. *c.* 8.
7 *An. c.* 10.

Beſides which general acts, there are others which concern the cities of *London* and *Weſtminſter* only, and other places within the bills of mortality; to wit,

3 *J.* *c.* 14.
19 *C.* 2. *c.* 3. *ſ.* 20.
22 & 23 *C.* 2. *c.* 17.
2 *W. ſeſſ.* 2. *C.* 8.
8 & 9 *W. c.* 37.

Sheep.

1. BY the 25 *H* 8. *c.* 13. For the preventing many farms being accumulated into few hands, and for the encouragement of tillage, it is enacted, that no perſon ſhall have above 2000 ſheep at one time, at ſix ſcore to the hundred, except it be upon his own inheritance only, and except what are neceſſary for his houſhold; on pain of forfeiting 3*s.* 4*d.* for every ſheep above that number, half to the king, and half to him that will ſue. None ſhall have above 2000 ſheep.

And

And if any perſon ſhall happen to have more, by reaſon of being executor or adminiſtrator, he ſhall ſell off within a year, till he have but 2000.

But ſheep bequeathed to a child within age, ſhall not be reckoned in the number.

And lambs are not to be reckoned ſheep, till the ſecond *Midſummer* after they are lambed.

And the juſtices of the peace may enquire of this offence by a jury, or by information.

None ſhall have above two farms.

2. And for the ſame reaſon, no perſon ſhall take above two farms, with houſes thereon; nor ſhall any perſon have two, except he dwell in the pariſh where they both are; on pain of 3 *s.* 4 *d.* a week in like manner. *id.*

Carrying ſheep over ſea.

3. By the 8 *El. c.* 3. No perſon ſhall ſend or carry over ſea, or receive into any ſhip for that purpoſe, any ſheep alive; on pain for the firſt offence, of forfeiting all his goods, half to the king, and half to him that will ſue, and being impriſoned for a year; and at the year's end in ſome open market town, in the fulneſs of the market, on the market day, he ſhall have his left hand cut off, and nailed up in the openeſt place of the market; And for the ſecond offence, ſhall be adjudged a felon, and ſhall ſuffer death as in caſes of felony; But not to work corruption of blood. And the juſtices of the peace may enquire of, hear and determine the ſame.

But the offender may have his clergy, as well in the caſe of the cutting off his hand, as in the caſe of felony. 3 *Inſt.* 104.

And by the 12 *C.* 2. *c.* No perſon ſhall export, or lay on board with intent to export any ſheep, except wether ſheep for the ſhip's uſe only; on pain of forfeiting the ſame, and for every ſheep 20 *s.* half to the king, and half to him that ſhall ſue, at the ſeſſions or elſewhere. And the owner of the ſhip, knowing the offence, ſhall forfeit his intereſt in the ſhip and furniture. And the maſter and mariners aſſiſting, ſhall forfeit in like manner, all their goods and chattels, and be impriſoned three months. And any merchant or other perſon offending herein, ſhall be diſabled to require any debt or account from any factor or other. And the offender may be tried in the county from whence they were exported, or where he ſhall be apprehended. Proſecution to be in one year. And if the ſhip belongs to an alien it ſhall be forfeited to the king.

Killing ſheep in the night.

4. If any perſon ſhall in the night time maliciouſly and willingly kill any ſheep; he ſhall be guilty of felony: but

but to avoid judgment of death, he may make his election to be tranſported for ſeven years. And three juſtices (1 *Q.*) may hear and determine the ſame. 22 & 23 *C.* 2. *ſ.* 7.

5. If any perſon ſhall in the night time maliciouſly and willingly maim, wound, or otherwiſe hurt any ſheep, whereby the ſame is not killed; he ſhall forfeit to the party grieved treble damages, by action of treſpaſs or on the caſe. 22 & 23 *C.* 2. *c.* 7. Hurting ſheep in the night.

6. If any perſon ſhall felonioufly drive away, or in any other manner felonioufly ſteal any ſheep or lamb; or ſhall wilfully kill any ſheep or lamb, with a felonious intent to ſteal the carcaſe or any part thrreof: or ſhall aſſiſt or aid in committing any the ſaid offences; he ſhall be guilty of felony without benefit of clergy. 14 *G.* 2. *c.* 6. *ſ.* 1. 15 *G.* 2. *c.* 34. Sheep ſtealing or killing, 10 l. reward.

And every perſon, who ſhall apprehend and proſecute to conviction any ſuch offender, ſhall have a reward of 10 *l.* in order to which, he ſhall have a certificate ſigned by the judge, before the end of the aſſizes, certifying ſuch conviction, and where the offence was committed, and that the offender was apprehended and proſecuted by the perſon claiming the reward; and if more than one claim the reward, he ſhall therein appoint what ſhare ſhall be paid to each claimant: Which certificate being tendered to the ſheriff, he ſhall pay the ſame within a month, without deduction, on pain of forfeiting double, with treble coſts: The ſame to be allowed on his accounts, or to be repaid him out of the treaſury. 14 *G.* 2. *c.* 6. *ſ.* 2, 3.

Sheriff.

1. SHERIFF (*Shireve*) in *Saxon* is *ſcirgereſa*, from *ſciran*, to *ſhare* or divide, for that the whole realm is parted and divided into *ſhires*; and *gereſa*, the *comes*, earl, or governor, in the *Belgick* called *graef* or *grave*. The word *comes*, or *count*, came firſt into *Europe* out of the eaſtern countries, probably from the *Hebrew cône* or *cûne*, which denoteth ſtrength, firmneſs, or ſtability; and the word *county*, in Latin *comitatus*, ſeemeth to be nothing elſe but the diviſion or allotment over which the *comes* or *count* Sheriff, what?

had jurisdiction. And when the counts or earls left the custody of the counties, then was the custody thereof committed to the *viscounts*, or *vicecomites* (which is the *Latin* name for the sheriffs); so called, because they supply the place of the *comes* or earl. The *earl* was otherwise called by the Saxons *eorl*, *ealdor*, *ealdorman* (elder, or alderman), because they were usually men of age and experience; by a like derivation as that of *senators* among the *Romans*.

Who shall be sheriff.

2. By four several statutes it is enacted, that none shall be sheriff, except he have sufficient land within the shire, to answer the king and his people. 9 *Ed.* 2. *st.* 2. 4 *Ed.* 3. *c.* 9. 5 *Ed.* 3. *c.* 4. 13 & 14 *C.* 2. *c.* 21.

By the Militia act, 2 *G.* 3. *c.* 20. No person, during the time he is acting as a militia officer, shall be obliged to serve the office of sheriff. *s.* 34.

But it is said to have been adjudged, in the case of the corporation of *Norwich* and *Berry*, *T.* 6. *G.* 3. that an attorney is not exempted from the office of sheriff.

How chosen.

3. At the common law, the sheriff was chosen by the county; but now by the statute of the 14 *Ed.* 3. *c.* 7. he shall be appointed yearly on the morrow of *All Souls*, at the exchequer, by the chancellor, treasurer, and chief baron, taking to them the chief justices.

Except in *London*, and where the office is a man's freehold or inheritance. 23 *H.* 6. *c.* 8.

His oath of office.

4. The sheriff (except in *Wales* and *Chester*) at the entering upon his office shall take the following oath (to be administered in pursuance of a writ of *dedimus potestatem.*)

I A. B. *do swear, that I will and truly serve the king's majesty in the office of sheriff in the county of* ——— *and promote his majesty's profit in all things that belong to my office, as far as I legally can or may; I will truly preserve the king's rights, and all that belongeth to the crown; I will not assent to decrease, lessen, or conceal the king's right, or the rights of his franchises; And whensoever I shall have knowledge that the rights of the crown are concealed or withdrawn, be it in lands, rents, franchises, suits, or services, or in any other matter or thing, I will do my utmost to make them be restored to the crown again; and if may not do it myself, I will certify and inform the king thereof, or some of his judges; I will not respite or delay to levy the king's debts, for any gift, promise, reward, or favour, where I may raise the same without great grievance to the debtors; I will do right, as well to poor as to rich, in all things belonging to my office; I will do no wrong to any man, for any gift, reward, or promise, nor for favour or hatred;*

hatred; I will diſturb no man's right, and will truly and faithfully acquit at the exchequer, all thoſe of whom I ſhall receive any debts or duties belonging to the crown; I will take nothing whereby the king may loſe, or whereby his right may be diſturbed, injured, or delayed; I will truly return, and truly ſerve all the king's writs, according to the beſt of my ſkill and knowledge; I will take no bailiffs into my ſervice, but ſuch as I will anſwer for, and will cauſe each of them to take ſuch oaths as I do, in what belongeth to their buſineſs and occupation; I will truly ſet and return reaſonable and due iſſues of them that be within my bailiwick, according to their eſtate and circumſtances, and make due panels of perſons able and ſufficient, and not ſuſpected, or procured, as is appointed by the ſtatutes of this realm: I have not ſold or let to farm, nor contracted for, nor have I granted or promiſed for reward or benefit, nor will I ſell or let to farm, nor contract for, or grant for reward or benefit, by myſelf or any other perſon for me, or for my uſe, directly or indirectly, my ſheriffwick, or any bailiwick thereof, or any office belonging thereunto, or the profits of the ſame, to any perſon or perſons whatſoever; I will truly and diligently execute the good laws and ſtatutes of this realm; and in all things well and truly behave myſelf in my office, for the honour of the king, and the good of his ſubjects, and diſcharge the ſame according to the beſt of my ſkill and power: So help me God. 3 G. c. 15. ſ. 18, 19.

5. By the 4 *H.* 4. *c.* 5. The ſheriff in perſon ſhall continue within his bailiwick, and ſhall not let it to farm. Sheriff ſelling inferior offices.

And by the 3 *G. c.* 15. *ſ.* 10. None ſhall buy, ſell, let, or take to farm the office of under-ſheriff, gaoler, bailiff, or other office pertaining to the office of high ſheriff; on pain of 500 *l.* half to the king, and half to him that ſhall ſue (in two years.)

6. By the 1 *H.* 5. *c.* 4. Sheriff's officers ſhall not be attornies. Sheriff's officers not to be attornies, or jurors.

And the ſheriff ſhall return none of his officers upon inqueſts: on pain of 40 *l.* half to the king, and half to him that ſhall ſue, in the ſeſſions, or elſewhere. 23 *H.* 6. *c.* 10.

7. The under-ſheriff ſhall be appointed by the high ſheriff, becauſe he ſhall anſwer for him; and he ſhall take the like oath as the high ſheriff, *mutatis mutandis.* 3 G. c. 15. ſ. 19. Appointment of the under ſheriff.

8. The bailiffs alſo ſhall be appointed by him for the like reaſon; and every bailiff, when he gives ſecurity upon entring into his office, ſhall make it part of the condition Appointment of bailiffs.

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of ſuch ſecurity, that he will deliver a copy of the clauſes in the act of the 32 G. 2. *c.* 28. concerning the carrying of priſoners for debt to alehouſes, which is inſerted more at large in title Gaoler.

And ſuch bailiff, or other perſon returning juries, or intermeddling with proceſſes, ſhall take the following oath of office, before a judge of aſſize, or the *cuſtos rotulorum*, or two juſtices of the peace (1 Q.)

I A. B. *ſhall not uſe or exerciſe the office of bailiff corruptly, during the time that I ſhall remain therein, neither ſhall or will accept, receive, or take, by any colour, means, or device whatſoever, or conſent to the taking of any manner of fee or reward of any perſon or perſons, for the impannelling or returning of any inqueſt, jury, or tales, in any court of record, for the king, or betwixt party and party, above* 2 s. *or the value thereof, or ſuch fees as are allowed and appointed for the ſame by the laws and ſtatutes of this realm, but will according to my power, truly and indifferently, with convenient ſpeed, impanel all jurors, and return all ſuch writ or writs touching the ſame, as ſhall appertain to be done by my duty or office, during the time that I ſhall remain in the ſaid office: So help me God.* 27 El. c. 12. ſ. 2.

And perſons acting before they have taken the ſaid oath, ſhall forfeit 40 *l.* half to the king and half to him that ſhall ſue, in the ſeſſions, or other court of record. *id. ſ.* 4, 6.

And if they commit any act contrary to their ſaid oath, they ſhall forfeit (in like manner) to the party grieved his treble damages. *id. ſ.* 5.

And the ſheriff's bailiffs ſhall not be in the ſame office in three years after. 1 *H.* 5. *c.* 4. Except in *London*, *Middleſex*, *Durham*, *Weſtmorland*, and towns being counties of themſelves. 3 *G. c.* 15. *ſ.* 21.

The ſheriff's two courts, the tourn, and county court.

9. The ſheriff hath a juriſdiction both in criminal and civil caſes; and for this purpoſe he hath two courts, his *tourn* for criminal cauſes, which is therefore the king's court; the other is his *county court* for civil cauſes, and this is the court of the ſheriff himſelf. 3 *Salk.* 322.

Sheriff's receiving the accounts of his predeceſſor.

10. The new ſheriff being appointed and ſworn, he ought at or before the next county court, to deliver a writ of diſcharge to the old ſheriff, who is to ſet over all the priſoners in the gaol ſeverally by their names (together with all his writs), preciſely, by view and indenture between the two ſheriffs; wherein muſt be comprehended all the actions which the old ſheriff hath againſt every priſoner, though the executions are of record. And till the delivery

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of the priſoners to the new, ſheriff, they remain in the cuſtody of the old ſheriff, notwithſtanding the letters patents of appointment, the writ of diſcharge, and the writ of delivery. Neither is the new ſheriff obliged to receive the priſoners, but at the gaol only. But the office of the old ſheriff ceaſes, when the writ of diſcharge cometh to him. *Wood. b.* 1. *c.* 7.

And by the 20 *G.* 2. *c.* 37. The old ſheriff ſhall turn over to his ſucceſſor, by indenture and ſchedule, all ſuch writs and proceſs as ſhall remain unexecuted; and the new ſheriff ſhall execute and return the ſame.

Sheriff how far amenable to the juſtices of the peace.

11. The ſheriff having a juſtice of the peace his warrant directed to him, ſhall execute the ſame; but he need not go in perſon to execute it, but may authorize another to do it. 2 *Haw.* 86.

And it is no excuſe to the ſheriff to return that he could not execute a precept becauſe of reſiſtance; for he may take with him the power of the county. 13 *Ed.* 1. *ſt.* 1. *c.* 39.

Alſo the ſheriff, on ſummons, is bound to attend the ſeſſions of the peace, there to return his precepts, to take the charge of the priſoners, to receive fines for the king, and the like. 2 *Haw.* 41.

And it ſeems clear from the general reaſon of the law, which gives all courts of record a kind of diſcretionary power over all abuſes by their own officers, that the ſheriff is puniſhable by the juſtices in ſeſſions, for defaults in executing their writs and precepts. 2 *Haw.* 142, 143.

Sheriff a conſervator of the peace, but not to act as juſtice.

12. Every ſheriff is a principal conſervator of the peace, by the common law, and may *ex officio* award proceſs of the peace, and take ſurety for it; and it ſeems to be the better opinion, that the ſecurity ſo taken by him is by the common law looked on as a recognizance or matter of record, and not as a common obligation. 2 *Haw.* 33.

But no ſheriff ſhall exerciſe the office of a juſtice of the peace, in any county wherein he is ſheriff; and in ſuch caſe, his acts as a juſtice ſhall be void. 1 *Mar. ſeſſ.* 2. *c.* 8.

Sheriff to have the keeping of gaols.

13. By the 14 *Ed.* 3. *c.* 10. and 19 *H.* 7. *c.* 10. The ſheriff ſhall have the keeping of gaols.

And in all *civil* cauſes, as in caſes of impriſonment for debt, the ſheriff or gaoler (at the election of the party) ſhall be anſwerable for eſcapes ſuffered by the gaoler; but if the gaoler ſuffer a *felon* voluntarily to eſcape, this inaſmuch as it reacheth to life, is felony only in the gaoler, but

but the ſheriff may be indicted, fined, and impriſoned. 1 *H. H.* 597.

Sheriff anſwerable for money levied by him.

14. Where the ſheriff levies money on a *fieri facias*, the plaintiff may have an action of debt againſt him for the money, becauſe it was received by him to the plaintiff's uſe, and the defendant is diſcharged of it; and it lies againſt his executors if he die. 3 *Salk.* 323.

Paſſing his accounts.

15. The manner of paſſing, his accounts is directed at large by the ſtatutes of the 3 *G. c.* 15 & 16. which being foreign to our purpoſe, are not here inſerted.

Paying rewards for convicting offenders.

16. But after the ſheriff hath paid the rewards for apprehending highwaymen, houſebreakers, and ſuch like, he ſhall not be obliged to tarry until the paſſing of his accounts for the repayment thereof, but he may immediately apply to the commiſſioners, of the treaſury, who ſhall upon inſpecting the certificate of the conviction, and the receipts of the perſons to whom the rewards were paid, forthwith repay the ſame to the ſheriff without fee. 3 *G. c.* 15. *ſ.* 4.

How long he ſhall continue in office.

17. No ſheriff ſhall continue in his office above one year, 14 *Ed.* 3. *c.* 7. 28 *Ed.* 3. *c.* 7. Except in *London*, *Middleſex*, and towns being counties of themſelves, and where the office is a man's freehold, or inheritance. 23 *H.* 6. *c.* 8. 3 *G. c.* 15. *ſ.* 21.

And by the 1 *R.* 2. *c.* 11. None that hath been ſheriff ſhall be ſo again within three years, if there be other ſufficient.

But by the 17 *Ed.* 4. *c.* 6. The ſheriff may hold his office after the year, during *Michaelmas* and *Hilary* terms, if not before lawfully diſcharged.

Sheriff dying before the expiration of his office.

18. If the ſheriff ſhall die before his office ſhall be expired, the under-ſheriff ſhall execute the ſame in the deceaſed ſheriff's name, till a new ſheriff be ſworn, and be anſwerable for the execution thereof, as the deceaſed ſheriff would have been. 3 *G. c.* 15. *ſ.* 8.

Ships.

Wilfully deſtroying.

1. IF any owner of, or captain, maſter, mariner, or other officer belonging to any ſhip, ſhall wilfully caſt away, burn, or otherwiſe deſtroy the ſhip of which he is owner, or unto which he belongeth, or in any wiſe direct

or

or procure the ſame to be done; with intent to prejudice any perſon that ſhall underwrite any policy of inſurance thereon, or any merchant that ſhall load goods thereon; he ſhall be guilty of felony without benefit of clergy. 11 *G. c.* 29. *ſ.* 6.

And if it is committed within the body of a county, it ſhall be tried there; if on the high ſeas, it ſhall be tried as in caſes of piracy. *ſ.* 7.

And by the 20 *G.* 2. *c.* 52. The ſaid offence is excepted out of the general pardon.

Plundering or deſtroying a ſhip in diſtreſs.

2. By the 12 *An. ſt.* 2. *c.* 18. and 26 *G.* 2. *c.* 19. If any perſon ſhall plunder any ſhip in diſtreſs, or wilfully do any thing tending to the immediate loſs of ſuch ſhip; he ſhall be guilty of felony without benefit of clergy.

Stealing goods from on ſhip-board.

3. All perſons who ſhall feloniouſly ſteal any goods of the value of 40 *s.* in any ſhip, boat, or veſſel, on any navigable river, or in any port of entry or diſcharge, or from any wharf or key, or ſhall be preſent and aſſiſting therein; he ſhall be guilty of felony without benefit of clergy. 24 *G.* 2. *c.* 45.

Shoemakers.

THE ſhoemakers duty in the true making of ſhoes, is inſerted in the title **Leather.**

Differences between ſhoemakers and their workmen, are treated of under the title **Servants.**

Silks.

THE *duties* on ſilks and calicoes, being under the ſame regulations with the duties on printed linens, the law concerning them is inſerted under the article of *linen cloth* in the title **Exciſe.**

Concerning ſervants and other workmen in the ſilken manufactures, ſee title **Servants.**

Silk thrower.

1. No perſon ſhall exerciſe the trade of a ſilk thrower unleſs he hath ſerved 7 years apprenticeſhip; on pain of

40*s.* a month, half to the king, and half to him that ſhall ſue in any court of record, or at the aſſizes, or quarter ſeſſions of the peace. 13 & 14 *C.* 2. *c.* 15. *ſ.* 2.

Alamodes and luteſtrings.

2. By the 9 & 10 *W.* *c.* 43. No foreign ſilks, called alamodes or luteſtrings, ſhall be imported, but in the port of *London*, on notice firſt given to the commiſſioners of the cuſtoms, and licence had from them. *ſ.* 1.

And if they be imported elſewhere, or without ſuch notice and licence, and the duties paid, they ſhall be forfeited, or the value thereof, and be ſold and exported again; and the offender ſo importing, and alſo the receiver, and perſon offering to ſell the ſame, ſhall forfeit 500 *l.* *ſ.* 3.

And the commiſſioners ſhall cauſe them to be marked and ſealed. *ſ.* 2.

And if any perſon ſhall counterfeit the cuſtom-houſe ſeal, or ſeal of the luteſtring company; he ſhall forfeit 500 *l.* and be ſet in the pillory two hours. *ſ.* 5.

And any perſon who ſhall buy and ſell or have in his cuſtody any alamodes or luteſtrings, ſealed or marked with a counterfeit ſeal or mark, ſhall forfeit the ſame and 100 *l.* *ſ.* 5.

And any perſon authorized by writ of aſſiſtance under the ſeal of the exchequer, or with a conſtable or other publick officer, inhabiting near the place, with a warrant from a juſtice of the peace, and in the day time, may enter any houſe, ſhop, cellar, warehouſe, or other place, to ſearch for and ſeize any alamodes or luteſtrings imported contrary to this act, or not ſealed or marked, or marked with a counterfeit mark or ſeal, and in caſe of reſiſtance may break open doors, cheſts, trunks, and other package; and every juſtice ſhall grant ſuch warrant to any credible perſon, making oath that he hath reaſon to ſuſpect or believe, that there are ſome of the ſaid ſilks ſo fraudulently imported or not ſealed and marked, or ſealed or marked with a counterfeit ſeal or mark in the place or places where he intends to ſearch. *ſ.* 5.

And all officers belonging to the cuſtoms, ſheriffs, mayors, bailiffs, conſtables, and other officers, ſhall be aiding in the execution thereof. *ſ.* 6.

(But none but cuſtomhouſe officers, or perſons deputed by the luteſtring company, and having writs of aſſiſtance from the exchequer, ſhall ſeize luteſtrings or alamodes within the bills of mortality. 5 *An.* *c.* 20. *ſ.* 3.)

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The ſaid penalties ſhall be two thirds to the king, and one third to him that ſhall ſeize or ſue in any court of record. *ſ.* 9.

3. By the 3 *G.* 3. *c.* 21. & 5 *G.* 3. *c.* 48. If any perſon ſhall import any ribbands, laces, or girdles, not made in Great Britain, whether the ſame ſhall be wrought of ſilk alone, or mixed with other materials; the ſame ſhall be forfeited, and may be ſeized by any officer of the cuſtoms, in whatever importers, venders, or retailers hands they may be found; and the importer, and every perſon aſſiſting therein, and the venders and retailers, in whoſe cuſtody they ſhall be found, or who ſhall ſell or expoſe the ſame to ſale, or conceal with intent to prevent the forfeiture, ſhall forfeit reſpectively 200*l.* with coſts. Half the ſaid penalties to be to the king, and half to the officer who ſhall inform and proſecute. Ribbands and laces.

But if any officer or officers of the cuſtoms ſhall neglect or refuſe, for one month after condemnation, to proſecute to effect any perſon for any of the ſaid pecuniary forfeitures; any other perſon may ſue for and recover the ſame; half thereof to go to the king in like manner, and half to him who ſhall ſue.

And when the goods ſeized (being out of the limits of the bills of mortality) ſhall not exceed the value of 20*l.*; two juſtices, on information before them that ſuch goods were ſeized as unduly imported, may hear and determine the ſame, and proceed to condemnation or diſcharge.

And after ſeizure, until condemnation or diſcharge, the ſaid goods ſhall be depoſited in one of the king's warehouſes, if the ſeizure be within the bills of mortality; elſewhere, in the hands of the chief magiſtrate or conſtable: and the ſame ſhall be free to inſpection, with leave of the court, judge, or juſtices, before whom the proſecution ſhall be.

And after condemnation, the ſaid goods ſhall be publickly ſold by the candle for exportation; half of the produce by ſuch ſale to be to the king, and half to the officer who ſhall ſeize and ſecure the ſame; and the ſame goods ſhall not be delivered out of the warehouſe, till ſecurity ſhall be given for exportation, and that the ſame ſhall not be landed again in any part of his majeſty's dominions.

And on information in writing upon oath, before two juſtices, that there is good ground and reaſon to ſuſpect, that ſuch ribbands, laces, or girdles have been imported, and are concealed by, or in the poſſeſſion or cuſtody of, any retailer or ſeller of ribbands, laces, or girdles; they may

iſſue their warrant to the conſtable or other peace officer, impowering him to ſearch, in the day time, the houſes, outhouſes, warehouſes, ſhops, cellars, rooms, and other places of ſuch perſons, and (if the ſame ſhall be found) to ſeize and carry away the ſame, and diſpoſe thereof as is aforeſaid.

And if any doubt ſhall ariſe where the ſaid goods were manufactured; the proof ſhall lie upon ſuch perſon in whoſe cuſtody they were found, and not upon the proſecutor: and if no proof ſhall be given that they were manufactured in Great Britain; the ſame ſhall, without any further proceeding, be taken to have been manufactured out of Great Britain.

Provided, that if any perſon, in whoſe poſſeſſion ſuch goods ſhall be ſeized (ſuch perſon not importing or concealing the ſame), ſhall diſcover upon oath before one juſtice the perſon who ſold the ſame to him, ſo as he may be convicted as the ſeller thereof; ſuch perſon ſhall be diſcharged of all penalties and forfeitures inflicted by this act on venders or retailers having ſuch goods in their poſſeſſion.

Provided alſo, that nothing herein ſhall extend to ſubject any perſon who ſhall wear or make uſe of ſuch ribbands, laces, or girdles, as part of their apparel or dreſs only, to any forfeiture or pecuniary penalty, or to any proof that they were manufactured in Great Britain.

Stockings, mitts, and gloves.

4. By the 5 *G.* 3. *c.* 48. If any foreign manufactured ſilk ſtockings, ſilk mitts, or ſilk gloves, ſhall be imported into this kingdom, or any part of the Britiſh dominions; the ſame ſhall be forfeited, and liable to be ſearched for and ſeized as other uncuſtomed goods: and every perſon who ſhall import the ſame, or be aſſiſting therein; and the venders and retailers in whoſe cuſtody they ſhall be found, or who ſhall ſell or expoſe the ſame to ſale, or conceal with intent to prevent the forfeiture; ſhall, over and above the forfeiture of the goods, forfeit 200*l.* with coſts; half to the king, and half to the officer who ſhall inform and proſecute.

And when the goods ſeized (being out of the limits of the bills of mortality) ſhall not exceed the value of 20*l.*; two juſtices may proceed to the condemnation thereof: And the proceedings in all other reſpects, ſhall be in like manner as in the caſe of ribbands and laces abovementioned.

Slander.

I Do not find it any where clearly ſettled, how far ſlander, or ſcandalous words are cognizable before juſtices of the peace, by reaſon of the different circumſtances in matters of ſo indeterminate a nature; for the ſame words, when ſpoken of different perſons, and even of the ſame perſon with a different emphaſis and manner of delivering them, may receive a very different interpretation.

In general, it ſeemeth that words which directly tend to a breach of the p ace, as if one man challenge another, are cognizable before juſtices of the peace, for which the party may be bound to the good behaviour, and even indicted, 2 *Salk.* 698. 1 *Keb.* 931.

But if they do not tend directly to a breach of the king's peace, but are matters only of private ſlander between party and party, which no way affect the publick adminiſtration of juſtice, as in caſe where the common people are wont to call one another knaves, and rogues, and whores, and thieves; I do not find it aſſerted by any good authority, that juſtices of the peace have any juriſdiction at all in ſuch matters; but the proper remedy ſeems to be in one of theſe two ways, either by a proſecution in the ſpiritual court, or by an action upon the caſe at the common law.

In the former caſe, it is provided by the ſtatute of *Circumſpecte agatis*, 13 *Ed.* 1. and alſo by the ſtatute of the 9 *Ed.* 2. *c.* 4. that in matters of defamation, no prohibition ſhall lie to the ſpiritual court from the courts temporal: But biſhop *Gibſon* ſays, that in order to ſecure cauſes of defamation in the ſpiritual court, againſt prohibitions, they muſt have theſe two incidents; 1. That they concern matters merely ſpiritual. 2. That they concern mere ſpiritual matter only, and not mixt with any matter determinable at common law. And the proſecution in this court muſt be only for the puniſhment of ſin, and the welfare of the ſoul; for the party cannot ſue there for amends or damages. *Gibſ.* 1070.

But the remedy in ſuch caſe (as hath been ſaid) muſt be by action in the courts tempora, if the words will bear it; But it ſeems very difficult, for the reaſons abovementioned,

to define what words are actionable, and what not. The moſt general rule ſeems to be, that words are then moſt properly actionable, when they are ſpoken of a perſon in relation to his profeſſion or calling, and not when ſpoken at large without any ſuch particular application.

And by the 21 *J. c.* 16. Actions upon the caſe for ſlanderous words, ſhall be brought within two years after the words ſpoken, and not after: and if the jury find the damages under 40*s.* the plaintiff ſhall have no more coſts than damages.

But if the words ſpoken are not in themſelves actionable, and damages are given to the plaintiff for a conſequential loſs only, there the plaintiff may have larger coſts. And the diſtinction is this: The ſtatute expreſly mentions actions of *ſlander*; but if the words are ſuch, as give the party an action in reſpect of the ſpecial damage reſulting therefrom, and are not in themſelves actionable, it is not properly an action of ſlander, but a ſpecial action on the caſe; and therefore is not within this ſtatute. *E.* 12 *G.* 2. *Baſs* and *Hickford.* Andr. 375.

M. 17 *G.* 2. *Underwood* and *Parks.* In an action for words, the defendant pleaded *not guilty*, and offered to prove the words to be true, in mitigation of damages: But *Lee* Ch. J. refuſed to admit the ſame, ſaying, that at a meeting of all the judges upon a caſe that aroſe in the common pleas, a large majority of them had determined, not to allow it for the future, but that it ſhall be *pleaded*, whereby the plaintiff might be prepared to defend himſelf, as well as to prove the ſpeaking of the words. *Str.* 1200.

Finally, there is one ſpecies of ſlander, of which the law takes a more eſpecial notice; and that is, when it relates to the great men of the realm: Concerning whom, it is enacted by the 3 Ed. 1. c. 34. 2 R. 2. ſt. 1. c. 5. and 12 R. 2. c. 11. *that none ſhall tell or publiſh any falſe news or tales, whereby diſcord, or occaſion of diſcord or ſlander may grow, between the king and his people, or the great men of the realm; and that none ſhall deviſe, ſpeak, or tell any falſe news or lies, of any prelates, lords, judges, or other great men of the realm, whereof any diſcord or ſlander may ariſe; on pain of impriſonment, until he hath brought into court the firſt author of the tale; and if he cannot find the author, he ſhall be puniſhed by advice of the council.*

Publiſh any falſe news or tales] But this extends only to extrajudicial ſlanders; for if a man charge them in due courſe

courſe of law, although the charge be falſe, yet there will lie no action *de ſcandalis magnatum*, neither at common law, nor by theſe ſtatutes. 2 *Inſt.* 228.

Smugglers. See Exciſe.
Snares. See Game.
Snuff. See Tobacco.
Soap. See Exciſe.
Sodomy. See Buggery.

Soldiers.

FOR ſoldiers inliſting into foreign ſervice, ſee title Foreign Service.

THE antient military order was, when the king was to be ſerved with ſoldiers for his war, a knight or eſquire of the county, that had revenues, farmers, and tenants, would covenant with the king by indenture inrolled in the exchequer, ſo ſerve the king for ſuch a term with ſo many men ſpecially named in a liſt, in his war. 1 *Inſt.* 71.

And in conſequence hereof, there are many regulations by divers ſtatutes concerning the ſame; which being now out of uſe, it is thought ſufficient juſt to mention them; to wit,

18 *H.* 6. *c.* 19.
7 *H.* 7. *c.* 1.
3 *H.* 8. *c.* 5.
2 & 3 *Ed.* 6. *c.* 2.
4 & 5 *P.* & *M.* *c.* 3.

But the preſent regulations concerning the ſoldiery (the militia excepted) are chiefly contained in the yearly acts againſt mutiny and deſertion; the ſubſtance whereof, ſo far as juſtices of the peace and other civil officers are concerned, is contained in the following ſections.

I. Articles of war.
II. Inliſting ſoldiers.
III. Muſter.
IV. Carriages.
V. Billetting.
VI. To remove in time of elections.
VII. Having wives or children, to be examined as to their ſettlement.
VIII. Deſtroying the game.
IX. Sued for debt.
X. Guilty of crimes.
XI. Pay.
XII. Deſerting.
XIII. Setting up trades after their diſcharge.
XIV. Maintenance after their diſcharge.
XV. Probate of their wills.

I. Articles of war.

The king may form articles of war for better government of the forces, and conſtitute courts martial, with power to try any crime by ſuch articles of war. 8 *G.* 3. *c.* 7. *ſ.* 54.

But no perſon ſhall be adjudged to ſuffer any puniſhment extending to life or limb, by the ſaid articles, except for crimes expreſſed to be ſo puniſhable by this act. *ſ.* 55.

II. Inliſting ſoldiers.

When any perſon ſhall be inliſted, he ſhall in four days, but not ſooner than 24 hours, be carried before the next juſtice, or chief magiſtrate of a town corporate (not being an officer in the army,) and before him ſhall be at liberty to declare his diſſent to ſuch inliſting; and on ſuch declaration, and returning the inliſting money, and paying 20*s.* for the charges expended on him, he ſhall be forthwith diſcharged, in preſence of ſuch magiſtrate: But if he ſhall

ſhall refuſe or neglect in 24 hours to return and pay ſuch money as aforeſaid, he ſhall be deemed to be inliſted, as if he had given his aſſent thereto before ſuch magiſtrate. If he declare that he voluntarily inliſted himſelf, the juſtice or chief magiſtrate ſhall forthwith certify under his hand, that ſuch perſon is duly inliſted, ſetting forth the place of his birth, age and calling (if known), and that the ſecond and ſixth ſections of the articles of war againſt mutiny and deſertion were read to him, and that he has taken the oath mentioned in the ſaid articles of war: And if any perſon ſo certified as duly inliſted ſhall refuſe to take the ſaid oath of fidelity before ſuch magiſtrate, the officer from whom he hath received ſuch money, may detain and confine him till he ſhall take it: And every military officer that ſhall act contrary hereto, or offend herein, ſhall incur the like penalty as is by this act inflicted for making a falſe muſter, to be recovered as any penalties by this act are recoverable. *ſ.* 70.

Which ſaid ſecond and ſixth ſections of the articles of war are theſe.

(*SECT. II.*)

Art. 1. Whatſoever officer or ſoldier ſhall preſume to uſe traiterous or diſreſpectful words againſt the ſacred perſon of his majeſty, his royal highneſs the prince of *Wales*, or any of the royal family; if a commiſſioned officer, he ſhall be caſhiered; if a non-commiſſioned officer, or ſoldier, he ſhall ſuffer ſuch puniſhment as ſhall be inflicted upon him by the ſentence of a court martial.

Art. 2. Any officer or ſoldier who ſhall behave himſelf with contempt or diſreſpect towards the general, or other commander in chief of our forces, or ſhall ſpeak words tending to his hurt or diſhonour, ſhall be puniſhed according to the nature of his offence, by the judgment of a court martial.

Art. 3. Any officer or ſoldier who ſhall begin, excite, cauſe or join in any mutiny or ſedition, in the troop, company, or regiment, to which he belongs, or in any other troop or company in our ſervice, or on any party, poſt, detachment, or guard, on any pretence whatſoever, ſhall ſuffer death, or ſuch other puniſhment as by a court martial ſhall be inflicted.

Art. 4.

Art. 4. Any officer, non-commiſſioned officer, or ſoldier, who being preſent at any mutiny or ſedition, does not uſe his utmoſt endeavours to ſuppreſs the ſame, or coming to the knowledge of any mutiny, or intended mutiny, does not without delay give information thereof to his commanding officer, ſhall be puniſhed by a court martial with death, or otherwiſe, according to the nature of the offence.

Art. 5. Any officer or ſoldier who ſhall ſtrike his ſuperior officer, or draw, or offer to draw, or ſhall lift up any weapon, or offer any violence againſt him, being in the execution of his office, on any pretence whatſoever, or ſhall diſobey any lawful command of his ſuperior officer, ſhall ſuffer death, or ſuch other puniſhment as ſhall, according to the nature of his offence, be inflicted upon him by the ſentence of a court martial.

(*SECT. VI.*)

Art. 1. All officers and ſoldiers, who having received pay, or having been duly inliſted in our ſervice, ſhall be convicted of having deſerted the ſame, ſhall ſuffer death, or ſuch other puniſhment as ſhall by a court martial be inflicted.

Art. 2. Any non-commiſſioned officer or ſoldier, who ſhall, without leave from his commanding officer, abſent himſelf from his troop or company, or from any detachment with which he ſhall be commanded, ſhall, upon being convicted thereof, be puniſhed according to the nature of his offence, at the diſcretion of a court martial.

Art. 3. No non-commiſſioned officer or ſoldier ſhall inliſt himſelf in any other regiment, troop, or company, without a regular diſcharge from the regiment, troop, or company, in which he laſt ſerved, on the penalty of being reputed a deſerter, and ſuffering accordingly. And in caſe any officer ſhall knowingly receive and entertain ſuch non-commiſſioned officer and ſoldier, or ſhall not, after his being diſcovered to be a deſerter, immediately confine him, and give notice thereof to the corps in which he laſt ſerved, he the ſaid officer ſo offending ſhall by a court martial be caſhiered.

Art. 4. Whatſoever officer or ſoldier ſhall be convicted of having adviſed or perſuaded any other officer or ſoldier to deſert our ſervice, ſhall ſuffer ſuch puniſhment as ſhall be inflicted upon him by the ſentence of a court martial.

And the *oath* mentioned in the ſaid articles of war, is as follows:

I ſwear to be true to our ſovereign lord king George, *and to ſerve him honeſtly and faithfully, in defence of his perſon, crown, and dignity, againſt all his enemies or oppoſers whatſoever: And to obſerve and obey his majeſty's orders, and the orders of the generals and officers ſet over me by his majeſty.*

And the juſtice's certificate of the whole may be this:

Weſtmorland. I *Do hereby certify, that* A. S. *of the age of* ——— *years, born at* ——— *in the county of* ——— *ſhoemaker, came this day before me* ——— *one of his majeſty's juſtices of the peace for the ſaid county of* ——— *and declared that on the* ——— *day of* ——— *now laſt paſt, he did voluntarily inliſt himſelf as a private ſoldier to ſerve his ſaid majeſty king* George *the third, in the regiment of foot commanded by* ——— *and that he now freely conſenteth unto the ſame: And thereupon I do hereby alſo certify, that he the ſaid* A. S. *is duly inliſted as aforeſaid; and that the ſecond and ſixth ſections of the articles of war againſt mutiny and deſertion were alſo before me read unto him this day, and that he hath alſo at the ſame time taken before me the oath mentioned in the ſaid articles of war. Given under my hand at* ——— *in the ſaid county of* ——— *the* ——— *day of* ———.

But if any perſon ſhall receive the inliſting money knowing it to be ſuch, and ſhall abſcond, or refuſe to go before ſuch magiſtrate, in order to declare his aſſent or diſſent, he ſhall be deemed to be liſted, and may be proceeded againſt as if he had taken the ſaid oath before ſuch magiſtrate. 8 *G.* 3. *c.* 7. *ſ.* 71.

III. Muſter.

Every commiſſary or muſter maſter, upon any muſter to be made, ſhall give convenient notice thereof to the mayor, or other chief officer, of the place where the ſoldiers are quartered; who ſhall be preſent at every ſuch muſter, and give his utmoſt aſſiſtance for the diſcovering of any falſe muſter

muſter: And every muſter maſter neglecting to give ſuch notice, or refuſing the aſſiſtance of ſuch mayor or other officer, ſhall forfeit 50 *l.* and his office. And no muſter roll ſhall be allowed, unleſs ſigned by ſuch mayor or other officer: But if ſuch mayor or officer ſhall not attend, or refuſe to ſign ſuch muſter roll, without giving ſufficient reaſon for ſuch his refuſal; then the commiſſary may proceed to muſter, and ſuch muſter roll ſhall be allowed, though not ſigned as aforeſaid, provided that oath be made before a juſtice in 48 hours after ſuch muſter; and the ſaid muſter roll ſhall be then produced, and examined by the ſaid juſtice, who ſhall ſign the ſame, if there appear to be no ſufficient objection to it. *ſ.* 14.

And in *Weſtminſter* and *Southwark*, no muſter ſhall be made, but in preſence of two juſtices (not being officers of the army); unleſs the juſtices, on 48 hours notice to ſix of them, neglect to attend. *ſ.* 35.

And the commiſſary or muſter maſter ſhall make oath (for which no fee ſhall be taken) before the mayor or chief magiſtrate attending the muſter, if ſuch mayor or chief magiſtrate be a juſtice of the peace, or otherwiſe before a juſtice in the form following; I *A. B.* do ſwear, that I ſaw at the time of making the within muſter, ſuch men or horſes as are borne, and not reſpited, on the muſter roll, for which men or horſes a ſigned certificate or certificates are not indorſed on the back of the roll, certifying their being abſent from the muſter, by reaſon of being employed on ſome other duty of the regiment, or by being ſick, in priſon, or furlough, or at graſs, or by a ſigned leave from the colonel or field officer, or officer commanding the regiment, troop, or company.

Which oath the ſaid commiſſary ſhall inſert and ſubſcribe on the back of the muſter roll tranſmitted by him into the office of the commiſſary general of the muſters, *ſ.* 17.

And if any perſon ſhall give a falſe certificate, to excuſe any ſoldier from muſter or other ſervice, on pretence of being employed on ſome other duty of the regiment, or of ſickneſs, being in priſon, or on furlough; he ſhall forfeit 50 *l.* and be caſhiered and diſabled to hold any military office. And no certificate ſhall excuſe the abſence of any ſoldier, but for the reaſons abovementioned, or one of them; and the commiſſary ſhall ſet down on the roll, at the time of taking the muſter, the reaſon of ſuch abſence, and by whom certified; and not to ſet down any ſuch excuſe, without view of ſuch certificate. *ſ.* 11.

And every officer that ſhall make any falſe muſter of man or horſe, and every commiſſary, muſter maſter, or other officer, who ſhall wittingly allow or ſign the muſter roll, wherein any ſuch falſe muſter is contained, or ſhall take any reward for muſtering or ſigning muſter rolls, ſhall be caſhiered and diſabled. *ſ.* 12.

And if any perſon ſhall be falſly muſtered; or offer himſelf to be falſly muſtered; on proof thereof by oath of two witneſſes, before the next juſtice, and on certificate thereof under the hand of the commiſſary, or chief magiſtrate as aforeſaid, he ſhall be committed to the houſe of correction for ten days: And if any perſon ſhall wittingly furniſh a horſe to be muſtered, he ſhall be forfeited to the informer, if he ſhall belong to the perſon furniſhing the ſame; otherwiſe the offender ſhall forfeit to the informer 20 *l.* on oath by two witneſſes, before the next juſtice, by diſtreſs; and if he ſhall have no ſufficient diſtreſs, or ſhall not pay in four days after conviction, he ſhall be committed to the common gaol for three months, or be publickly whipped, at the diſcretion of the juſtice; and the informer if a ſoldier, ſhall be diſcharged, if he demands it. *ſ.* 15.

But fictitious names, allowed by his majeſty's order upon the muſter rolls, for the maintenance of widows of officers who loſt their lives in the late war, or during the late rebellion, ſhall not be conſtrued a falſe muſter. *ſ.* 13.

VI. Carriages.

For proviſion of carriages for the forces in their march, or for their arms, cloaths and accoutrements, any juſtice of the peace, being duly required thereunto, by any order from his majeſty, or the general of his forces, or the maſter general, or lieutenant general of his majeſty's ordnance, ſhall on ſuch order being brought and ſhewn unto him, by the quarter maſter, adjutant, or other officer of the regiment, troop, or company ordered to march, iſſue out his warrant to the conſtable or petty conſtables of the diviſion, liberty, hundred, or precinct from, through, near, or to which ſuch forces ſhall be ordered to march; requiring them to make ſuch proviſion for carriages, with able men to drive the ſame, as is mentioned in the ſaid warrant; allowing them ſufficient time to do the ſame, that the neighbouring parts

may

may not always bear the burden: And if ſufficient carriages cannot be provided within any ſuch liberty, diviſion, or precinct; then the next juſtice (or juſtices) of the county, riding, or diviſion, ſhall on ſuch order as aforeſaid ſo brought or ſhewn to him iſſue his warrant to the conſtables or petty conſtables of ſuch next county, riding, diviſion, or precinct, for the purpoſes aforeſaid, to make up ſuch deficiency. *ſ.* 40.

Which warrant may be thus:

Weſtmorland, { To the conſtable of ——

BY *virtue of an order from* —— *general of his majeſty's forces, this day brought and ſhewn unto me* ——— *one of his majeſty's juſtices of the peace for the ſaid county, by* —— *lieutenant in captain* ———*'s company of his majeſty's regiment of foot, commanded by* ——— *you are hereby required to provide* ——— *ſufficient carriages, with able men to drive the ſame, within your conſtablewick, whereby to remove the arms, cloaths, and accoutrements of the ſaid company on their march from* Shap *to* Kirkby *in* Kendale *in the ſaid county; and with them you are to appear at* Shap *aforeſaid to-morrow preciſely at five of the clock in the morning. Herein fail you not, as you will anſwer the contrary at your peril. Given under my hand and ſeal at* ——— *in the ſaid county, the* —— *day of* —— *in the* —— *year* ——.

And the officer, who by virtue of the ſaid warrant is to demand the carriages of the conſtable to whom it is directed, ſhall at the ſame time pay down to him in hand for the uſe of the perſons who ſhall provide ſuch carriages and men, the ſum of 1 *s.* for every mile any waggon with five horſes ſhall travel; and 1 *s.* for every mile any wain with ſix oxen, or four oxen with two horſes ſhall travel; and 9 *d.* for every mile any cart with four horſes ſhall travel; and ſo in proportion for leſs carriages: For which the conſtable ſhall give a receipt. *ſ.* 40.

And ſuch conſtable, or petty conſtable, ſhall appoint ſuch perſons having carriages within their reſpective liberties, as they ſhall think proper, to provide and furniſh ſuch carriages and men. *id.*

And if any military officer ſhall force any carriage to travel more than one day's journey; or ſhall not diſcharge the ſame in due time for their return home; or ſhall ſuffer any

ſoldier

ſoldier or ſervant (except ſuch as are ſick), or any woman, to ride in ſuch carriage; or ſhall force any conſtable, by threatnings, to provide ſadle horſes for themſelves or ſervants; or ſhall force horſes from the owners, by themſelves, ſervants, or ſoldiers; he ſhall forfeit 5 *l.* proof thereof being made on oath before two juſtices, who ſhall certify the ſame to the paymaſter general, or other paymaſter of the forces, who ſhall pay the ſame, according to the order of the ſaid juſtices under their hands and ſeals, who ſhall deduct the ſame out of the officer's pay. *id.*

And no waggon, wain, cart, or carriage, ſhall be obliged to carry above thirty hundred weight. *ſ.* 44.

And if any high or petty conſtable ſhall wilfully neglect or refuſe to execute ſuch warrants for providing carriages; or if any perſon appointed by ſuch conſtable to furniſh any carriage and man, ſhall refuſe and neglect to provide the ſame; or any other perſon ſhall wilfully hinder the execution thereof; he ſhall forfeit not exceeding 40 *s.* nor leſs than 20 *s.* to the poor of the pariſh where ſuch offence ſhall be committed; the ſame to be heard and determined by two juſtices dwelling in or near the place, who ſhall cauſe the penalty to be levied by diſtreſs. *ſ.* 41.

And whereas the ſums to be paid to the conſtables by the officers demanding carriages, are in many caſes not ſufficient to anſwer the charge and expence of providing the ſame, to the great burden of the townſhip, or elſe the perſons performing ſuch carriages are grievouſly oppreſſed; it is enacted, that the treaſurer of the county ſhall without fee pay unto ſuch conſtable all reaſonable ſums by him laid out for carriages, over and above what was or ought to have been paid by the officer requiring ſuch carriages, out of the publick ſtock, according to ſuch rates and orders as the juſtices in ſeſſions ſhall direct, which orders ſhall be made without fee; regard being had to the ſeaſon of the year, and the length and condition of the ways; and if the publick ſtock be not ſufficient, the juſtices in ſeſſions may raiſe money as for gaols and bridges. *ſ.* 42, 43.

That is to ſay, the ſame ſhall be paid out of the general county rate, as directed by the 12 *G.* 2. *c.* 29.

H. 3 *G. K.* againſt *Hunt* and others. The court granted a *mandamus* directed to the juſtices of the peace, to allow the defendants, being conſtables, the extraordinary charges in providing carriages on the late expedition into *Scotland*. Str. 42, 93.

V. Billeting.

By the 31 *C.* 2. *c.* 1. No officer, military or civil, nor any other perſon whatſoever, ſhall preſume to place, quarter or billet any ſoldier, on any ſubject or inhabitant of this realm, of any degree, quality, or profeſſion whatſoever, without his conſent; and every ſuch ſubject or inhabitant may refuſe to ſojourn or quarter any ſoldier, notwithſtanding any command, order, warrant, or billeting whatever. *ſ.* 54.

But by the mutiny act, The conſtables and other chief officers and magiſtrates of cities, towns, villages, and other places, and in their default or abſence, any one juſtice inhabiting in or near ſuch place, and no other, ſhall and may quarter and billet the officers and ſoldiers in inns, livery ſtables, alehouſes, victualling houſes, and the houſes of ſellers of wine by retail to be drank in their own houſes or places thereunto belonging (other than perſons who keep taverns only, being free of the vintners company in *London*), and all houſes or perſons ſelling brandy, ſtrong waters, cyder, or metheglin, by retail to be drank in houſes, (other than the houſes of diſtillers who keep places of diſtilling brandy and ſtrong waters, and of ſhopkeepers whoſe principal dealing ſhall be more in other goods than in brandy or ſtrong waters, and who do not permit tippling in their houſes) and no other, and in no private houſes whatſoever; nor ſhall any more billets be ordered, than there are effective ſoldiers; and if any conſtable, or ſuch like officer, or magiſtrates as aforeſaid, ſhall preſume to quarter or billet any ſuch officer or ſoldier in any private houſe, without the conſent of the owner or occupier, ſuch owner or occupier ſhall have his remedy at law againſt ſuch magiſtrate or officer for damages; and if any military officer ſhall take upon him to quarter ſoldiers otherwiſe than by this act, or ſhall offer any menace or compulſion, to any mayor, conſtable, or other civil officer before mentioned, tending to deter and diſcourage any of them from doing their duty, he ſhall on conviction beofre any two of the next juſtices by the oath of two witneſſes, be *ipſo facto* caſhiered and diſabled to hold any military employment; provided the conviction be affirmed at the next quarter ſeſſions, and a certificate thereof be tranſmitted to the judge advocate, who ſhall certify the ſame to the next court martial. And if any perſon ſhall be aggrieved by having more ſoldiers

diers billeted than in proportion to his neighbours, on complaint thereof to one juſtice, or if the perſon ſo billeting them be a juſtice, than on complaint to two juſtices, they may relieve him. *ſ.* 23.

Note, The clauſe above recited, relating to ſhopkeepers, might as well be now omitted out of the act; for that by the 17 *G.* 2. *c.* 17. no ſhopkeepers, as ſuch, are allowed to retail any ſpirituous liquors, but only thoſe who keep taverns, victualling houſes, inns, coffee houſes, or alehouſes.

But no juſtice, having any military command, ſhall be concerned in quartering ſoldiers under his immediate command; but all things done by him therein ſhall be void. 8 *G.* 3. *c.* 7. *ſ.* 24.

And if any conſtable, or other officer, ſhall neglect his duty in billeting, for the ſpace of two hours, provided ſufficient notice hath been given before, of the arrival of the forces; or ſhall take any reward to excuſe any perſon; or if any perſon liable ſhall refuſe to receive any ſoldiers, or to furniſh them as required by this act; and be thereof convicted, before one juſtice, by confeſſion, or oath of one witneſs, he ſhall forfeit 5*l.* (or any ſum not exceeding 5*l.* nor leſs than 40*s.*) by diſtreſs, by warrant of ſuch juſtice, to be directed to any other conſtable, or to any overſeer of the poor of the pariſh where the offender ſhall dwell, for the uſe of the poor of the ſaid pariſh. *ſ.* 27.

And if any officer ſhall take any money of any perſon, for excuſing the quartering of ſoldiers, he ſhall be caſhiered and incapacitated. *ſ.* 27.

And if any officer, military or civil, ſhall quarter any of the wives, children, men, or maid ſervants of officer or ſoldier, in any houſe againſt the conſent of the owner; if he is an officer of the army, he ſhall on proof made thereof to the commander in chief of the army, or judge advocate, be *ipſo facto* caſhiered; and if a conſtable, or other civil officer, he ſhall forfeit to the party grieved 20*s.* on proof thereof to the next juſtice, by diſtreſs. *ſ.* 46.

Officers and ſoldiers, billeted as aforeſaid, ſhall be received and furniſhed with diet and ſmall beer, paying for the ſame as hereafter is mentioned, out of their ſubſiſtence money. *ſ* 25.

But if any perſon ſhall chuſe rather to furniſh them with candles, vinegar, and ſalt, and with either ſmall beer or cyder, not exceeding five pints a day, *gratis*, and allow them the uſe of fire, and the neceſſary utenſils for dreſſing and eating their meat, and ſhall give notice thereof to the

commanding officer, and ſhall furniſh the ſame accordingly; in ſuch caſe, they ſhall provide their own victuals, and the officers ſhall pay the ſums out of the ſubſiſtence money for diet and ſmall beer to ſuch ſoldiers, and not to the perſons on whom they are quartered; except on a march, or recruiting. *ſ.* 26.

In all places where horſe or dragoons ſhall be quartered, the men and their horſes ſhall be billeted in one and the ſame houſe (except in caſe of neceſſity); and in no caſe there ſhall be leſs than one man billeted, where there ſhall be one or two horſes, nor leſs than two men where there ſhall be four horſes, and ſo in proportion. *ſ.* 28.

Officers may remove or exchange men or horſes, with others quartered in the ſame town; provided the numbers ſo exchanged are equal: and the conſtables, or other officers, ſhall billet them accordingly. *ſ.* 29.

Any juſtice by his warrant, may command any conſtable or other officer, to give an account in writing of the number of officers and ſoldiers billeted by them, and alſo of the names of the perſons on whom they are billeted, with the ſtreet or place where they dwell, and the ſigns if any; that it may appear where they are quartered, the better to prevent abuſes in billeting of them. *ſ.* 68.

In *Weſtminſter*, the petty conſtables ſhall deliver liſts on oath at every quarter ſeſſions, of the houſes and perſons obliged to receive ſoldiers quartered, and the number billeted in each houſe; the liſts to remain with the clerk of the peace, to be inſpected without fee: and the clerk ſhall deliver copies at 2 *d.* a ſheet containing 150 words: conſtables making default ſhall forfeit 5 *l.* to the poor by diſtreſs, by warrant of one juſtice; for want of diſtreſs, to be impriſoned not more than three months, nor leſs than one. *ſ.* 37.

VI. To remove in time of elections.

On notice from the clerk of the crown, to the ſecretary at war, of any writ made out for the election of a member to ſerve in parliament, he ſhall ſend orders for removing ſoldiers two miles or more from the place of election, at leaſt one day before the election, and continue at leaſt one day after the poll taken: But this not to extend to *Weſtminſter*, or other place of reſidence of the royal family, or fortified places, or any officer or ſoldier having a right to vote at ſuch election. 8 *G.* 2. *c.* 30.

VII.

VII. Having wives or children to be examined as to their ſettlements.

If any non-commiſſioned officer or ſoldier ſhall have wife, child, or children; two juſtices may ſummon him, where he is quartered, to make oath of the place of his laſt legal ſettlement; who ſhall obey ſuch ſummons, and make oath accordingly: And the juſtice ſhall give an atteſted copy of ſuch affidavit, to be delivered to the commanding officer, to be produced when required. And being ſummoned again, he ſhall not take another oath with regard to his ſettlement, but ſhall leave a copy of the former. 8 *G.* 3. *c.* 7. *ſ.* 30.

VIII. Deſtroying the game.

If any officer or ſoldier ſhall, without leave of the lord of the manor under his hand and ſeal, take or kill any hare, coney, pheaſant, partridge, pigeon, or other fowl, poultry, or fiſh, or his majeſty's game, and be convicted thereof on oath of one witneſs, before one juſtice; every officer ſo offending ſhall forfeit 5 *l.* to the poor; and the commanding officer upon the place, for every offence committed by any ſoldier under his command, ſhall forfeit 20 *s.* to be paid and diſtributed in manner aforeſaid. And if, upon conviction by the juſtices, and demand thereof made by the conſtable or overſeers of the poor, he ſhall not in two days pay the ſaid penalties, he ſhall forfeit his commiſſion. *ſ.* 47.

IX. Sued for debt.

No volunteer ſhall be taken out of the ſervice, by any proceſs, other than for ſome criminal matter, unleſs for a real debt, or other juſt cauſe of action, and unleſs affidavit be made before a judge of the court, or before ſome perſon authorized to take affidavits in ſuch court, that the original ſum due amounts to 10 *l.* a memorandum of which oath ſhall be indorſed on the proceſs; and if he ſhall be otherwiſe arreſted, the judge may diſcharge him, and award coſts. *ſ.* 65.

But the plaintiff, on notice given in writing of the cauſe of action to ſuch perſon, or left at his laſt place of reſidence before liſting, may file a common appearance, in an action to be brought for any debt, ſo as to intitle him to proceed therein to judgment and outlawry, and to execution, other than againſt his body. *ſ.* 66.

X. Guilty of crimes.

The king may appoint courts martial, for trial of the offences of ſoldiers, by the articles of war. *ſ.* 54.

And every officer and ſoldier who ſhall begin, excite, cauſe, or join in any mutiny or ſedition, or ſhall not uſe his utmoſt endeavours to ſuppreſs the ſame, or ſhall not give immediate notice thereof to his commanding officer, or ſhall deſart, or liſt in any other regiment, or ſhall be found ſleeping on his poſt, or ſhall leave it before relieved, or ſhall hold correſpondence with the enemy, or ſtrike or uſe any violence againſt his ſuperior officer in the execution of his office, or ſhall diſobey his lawful commands, ſhall ſuffer death, or ſuch other puniſhment as a court martial ſhall inflict. *ſ.* 1.

But the trial of offences by a court martial ſhall not exempt them from the ordinary proceſs of law. *ſ.* 10.

And if any officer or ſoldier ſhall be accuſed of any capital crime, or of any violence or offence againſt the perſon, eſtate, or property of any of the king's ſubjects, the commanding officer ſhall uſe his utmoſt endeavour to deliver over ſuch accuſed perſon to the civil magiſtrate; and ſhall alſo be aiding to the officers of juſtice, in ſeizing and apprehending him, in order to bring him to trial; on pain, on conviction before two juſtices, by the oaths of two witneſſes, of being *ipſo facto* caſhiered and diſabled; provided the conviction be affirmed at the next quarter ſeſſions, and a certificate thereof be tranſmitted to the judge advocate, who ſhall certify the ſame to the next court martial. *ſ.* 59.

But no perſon acquitted or convicted of capital offences by the civil magiſtrate, ſhall be puniſhed for the ſame by a court martial, otherwiſe than by caſhiering. *ſ.* 58.

By the 19 *G.* 2. *c.* 21. Soldiers convicted of profane curſing or ſwearing, and not paying the penalty, ſhall not be committed to the houſe of correction as other offenders, but ſhall be put in the ſtocks for one hour, for every ſingle offence; and for any number of offences, of which

which they ſhall be convicted at one and the ſame time, two hours.

XI. Pay.

The officer who ſhall receive the pay or ſubſiſtence money, ſhall immediately upon receipt thereof, give publick notice to all perſons keeping inns or other places where ſoldiers are quartered to repair to their quarters, at ſuch time as they ſhall appoint for diſtribution thereof to the officers and ſoldiers, which ſhall be within four days after the receipt thereof: And the ſaid innkeepers and others ſhall be firſt paid, before any part of the pay be diſtributed to the officers or ſoldiers; provided the accounts exceed not for a commiſſion officer of horſe under the degree of a captain, for diet and ſmall beer 2*s.* a day; nor for a commiſſion officer of dragoons under the degree of a captain 1*s.* nor for a commiſſion officer of foot under the degree of a captain 1*s.* and for each horſe 6*d.* nor for one light horſeman's diet and hay and ſtraw for his horſe 1*s.* nor for one dragoon's diet and hay and ſtraw for his horſe 1*s.* nor for one foot ſoldier's diet 4*d.* And if any officer ſhall not give ſuch notice, and ſhall not immediately on producing ſuch account pay the ſame, on complaint and oath made thereof by two witneſſes at the next quarter ſeſſions, the paymaſter (on certificate of the juſtices in ſuch ſeſſions of the ſum due, and to whom the ſame is owing) ſhall pay the ſame out of the ſaid officer's arrears, on pain of forfeiting his office, and diſability; and if no ſuch arrears be due, the paymaſter ſhall deduct the ſums to be paid, purſuant to the juſtices certificate, out of the next pay of the regiment; and ſuch officer ſhall for ſuch his offence, or for neglecting to give ſuch notice, be *ipſo facto* caſhiered. And where it ſhall happen, that the ſubſiſtence money due to any officer or ſoldier ſhall by any accident not be paid, or ſuch officer or ſoldier ſhall neglect to pay the ſame; or where any forces ſhall be upon their march, ſo that no ſubſiſtence can be remitted to them, or they ſhall neglect to pay the ſame; every ſuch officer ſhall, before his departure out of his quarters, make up the accounts with every perſon with whom ſuch ſoldiers ſhall have quartered, and ſign a certificate thereof, and give the ſame to the party to whom ſuch money is due, with the name of the regiment, troop, or company to which he ſhall belong, that the ſame may be tranſmitted to the paymaſter,

who ſhall immediately pay the ſame, under pain as is before directed for non-payment of Quarters. 8 G. 3. c. 7. ſ. 34.

XII. Deſerting.

The conſtable may take up any perſon reaſonably ſuſpected to be a deſerter, and carry him before a juſtice in or near the place, who ſhall examine ſuch ſuſpected perſon; and if by his confeſſion, or the oath of one witneſs, or the knowledge of ſuch juſtice, he ſhall be found to be a deſerter, the juſtice ſhall forthwith cauſe him to be conveyed to the county gaol, or houſe of correction (or the *Savoy* in *London*) and tranſmit an account thereof to the ſecretary at war; and the keeper of ſuch gaol or houſe of correction ſhall receive the ſubſiſtence of ſuch deſerter, for his maintenance while he ſhall be in cuſtody, but ſhall not be intitled to any fee for his impriſonment. ſ. 50.

But no officer may break open any houſe to ſearch for deſerters, without a juſtice's warrant; on pain of 20 l. ſ. 53.

And the juſtice, before whom he is brought, ſhall iſſue his warrant to the collector of the land tax, of the pariſh or townſhip where ſuch deſerter ſhall be apprehended, for paying out of the land tax money by him collected or to be collected, to the hands of him who ſhall apprehend, or cauſe to be apprehended, ſuch deſerter, the ſum of 20 s. the ſame to be allowed on his account. ſ. 51.

And if the court martial, before whom ſuch deſerter ſhall be convicted, ſhall not think the offence deſerving of capital puniſhment; they may, inſtead of awarding a corporal puniſhment, adjudge him to ſerve as a ſoldier in any corps ſtationed in any of his majeſty's dominions beyond the ſeas, or in foreign parts, for life, or for a certain term of years: and if he ſhall, without leave of his majeſty or of the commanding officer, return within the time limited, and ſhall be convicted thereof by a court martial, he ſhall ſuffer death. ſ. 6.

And if any perſon ſhall knowingly harbour or aſſiſt any deſerter, he ſhall forfeit 5 l. and if any perſon ſhall knowingly buy or exchange or otherwiſe receive any arms, cloaths, or furniture, belonging to the king, from any ſoldier or deſerter, or change the colour thereof, he ſhall forfeit 5 l. and on conviction by the oath of one witneſs, before one juſtice, the ſaid penalties ſhall be levied by diſtreſs; half

half the firſt penalty to be to the informer, by whoſe means ſuch deſerter ſhall be apprehend; and half the laſt penalty to the informer; and half of both, to the officer to whom the deſerter did belong: and if ſuch perſon have not ſufficient, or ſhall not pay the penalty in four days, the juſtice ſhall commit him to gaol for three months, or cauſe him to be publickly whipped. *ſ.* 52.

And by the 1 *G. ſt.* 2. *c.* 47. If any perſon (other than inliſted ſoldiers againſt whom ſufficient remedy is already provided) ſhall perſuade any ſoldier to deſert, he ſhall on conviction in ſix months forfeit 40 *l.* to the king, or to any other who ſhall ſue for the ſame in any court at *Weſtminſter*; and if he ſhall not have goods worth 40 *l.* or from the circumſtances of the crime it ſhall be thought proper, the court may award the offender to priſon not exceeding ſix months, and to ſtand in the pillory one hour.

[And here it may be requiſite to animadvert upon a cuſtom, which hath unaccountably prevailed, for juſtices of the peace at their diſcretion to prolong the time limited by the officers in the ſoldiers *furloughs*. No law gives, nor ever did give to them, any ſuch power: and it might be very prejudicial to the publick ſervice, if it ſhould be in the power of a juſtice of the peace, when a ſoldier's immediate preſence is wanted, as it may be at any time, by lengthening the furlough, to prevent the ſoldier's attendance. In caſe of ſickneſs, or other unavoidable accident, it may be uſeful for a juſtice to certify upon the back of the furlough ſuch neceſſity, ſpecially ſetting forth the ſame; to prevent his being apprehended as a deſerter, or puniſhed at his return. But nevertheleſs, ſuch certificate is no way obligatory or concluſive, and a juſtice of the peace hath no more to do with it than any other credible perſon or perſons.]

XIII. Setting up trades after their diſcharge.

By the 22 *G.* 2. *c.* 44. All officers, mariners, and ſoldiers who have been employed in his majeſty's ſervice, and not deſerted, may ſet up and exercife ſuch trades as they are apt for, in any town or place within *Great Britain* or *Ireland* (except *Oxford* and *Cambridge*); and if they ſhall be ſued thereupon, they ſhall have double coſts.

And by the 3 *G.* 3. *c.* 8. with regard to officers, mariners, ſoldiers, and mariners, who have ſerved ſince *Nov.* 29, 1748, it is enacted more at large as followeth: Where-

as there have been and are divers officers, mariners, ſoldiers, and marines, who have ſerved in the late war, ſome of whom uſed trades, others were apprentices who had not ſerved out their times, and others by their own induſtry have made themſelves apt and fit for their trades; many of which, the war being now ended, would willingly employ themſelves in thoſe trades they were formerly accuſtomed to, or which they are apt or able to follow, but may be hindered from exerciſing the ſame in certain cities, corporations, and other places, becauſe of certain by-laws and cuſtoms of thoſe places, and of the ſtatute of the 5 *Eliz.* prohibiting the uſe of certain trades by any perſon who hath not ſerved 7 years apprenticeſhip; it is enacted, that all ſuch officers, mariners, ſoldiers, and marines, who have ſerved ſince the ſaid 29th day of Nov. 1748, and not deſerted, and alſo their wives and children, may ſet up and exerciſe ſuch trades as they are apt and able for, in any town or place within Great Britain or Ireland (except Cambridge and Oxford) without any moleſtation by reaſon of the uſing of ſuch trade; nor ſhall they, or their wives or children, during the time they ſhall exerciſe ſuch trades, be removeable from ſuch place to their laſt legal place of ſettlement, by virtue of any law now in being relative to the ſettlement of the poor, until they ſhall become actually chargeable; and if they ſhall be ſued for exerciſing ſuch trade, they ſhall have double coſts. And two juſtices may cauſe ſuch officer, mariner, ſoldier, or marine, to be ſummoned before them in the town or place where they ſhall exerciſe ſuch trade, in order to make oath of the place of their laſt legal ſettlement; which ſummons they ſhall obey, and make oath accordingly. And the juſtices ſhall give an atteſted copy of ſuch affidavit ſo made before them, to the perſon making the ſame, in order that he may produce it when required. Which atteſted copy ſhall at any time be admitted as evidence as to ſuch ſettlement, at any general or quarter ſeſſions. And if he ſhall be ſummoned again to make oath as aforeſaid: on ſuch atteſted copy being produced, he ſhall not be obliged to make any further oath with regard to his ſettlement, but ſhall leave a copy of ſuch atteſted copy of his examination, if required.

XIV.

XIV. Maintenance after their diſcharge.

By the 43 *El. c.* 3. Every pariſh ſhall be charged with a weekly ſum towards the relief of ſick, hurt, and maimed ſoldiers and mariners, as the juſtices in ſeſſions ſhall appoint; ſo as no pariſh be rated above 10 *d.* nor under 2 *d.* weekly; and ſo as the total ſum in any county where there ſhall be above 50 pariſhes, do not exceed 6 *d.* for every pariſh.

But as this is left to the diſcretion of the juſtices, this is not uſually done; but they are left to be provided for by the particular pariſhes whereunto they belong, or to the proviſions of the royal hoſpitals of *Greenwich* or *Chelſea* reſpectively.

With regard to the out penſioners of *Chelſea* hoſpital, it is required by the ſtatute of the 28 *G.* 2. *c.* 1. that the juſtices of the peace ſhall take affidavits of their being alive (or of the time of their deaths reſpectively) half yearly, without fee. *ſ.* 2.

XV. Probate of their wills.

The probate of the will, or letters of adminiſtration of any common ſoldier or ſeaman, who ſhall be ſlain or die in the ſervice, ſhall be exempted from the ſtamp duties, a certificate being produced from the captain under whom he ſerved at the time of his death, and oath made of the truth thereof, before the proper judge or officer, for which oath no fee ſhall be taken. 5 *W.* *c.* 21. *ſ.* 6.

THERE are annual acts likewiſe for the better governing his majeſty's MARINE forces whilſt on ſhore; which are in moſt reſpects the ſame with the above regulations concerning the land forces: only with ſome neceſſary variations, upon the account of thoſe forces being ſubject to the juriſdiction of the admiralty.

Thus the lord high admiral, or three commiſſioners of the admiralty, are to form *articles of war*, and grant commiſſions for holding *courts martial*.

The juſtice's certificate of *inliſting*, is to ſet forth, that the 2d and 3d ſections of the articles of war for the better government of his majeſty's marine forces, while on ſhore in Great Britain or Ireland were read to the perſon

perſon inliſted, and that he hath taken the oath of fidelity mentioned in the 12th ſection of the ſaid articles of war.

Notice of a *deſerter* being apprehended, is to be ſent to the ſecretary of the admiralty.

The *billeting*, and *carriages*, are to be in purſuance of orders from the admiralty: And there is a proviſion (as it was in the mutiny acts, till within two or three years laſt paſt), that no waggon, wain, cart, or carriage, ſhall be obliged to carry above *twenty* hundred weight; whereas in two or three of the laſt mutiny acts it is expreſſed (by miſtake, moſt probably) that they ſhall not be obliged to carry above *thirty* hundred weight; which is inadequate, and will bring the proportion of a ſingle horſe cart at that rate to ſix hundred weight, which is generally impoſſible for a ſingle horſe to draw. And therefore it ſeemeth, that the word *twenty* ought to be reſtored.

Spirituous liquors. See Exciſe.
Squibs. See Fireworks.
Stabbing. See Homicide.

Stamps.

Statutes.

1. THE ſtatutes relating to theſe duties are

5 *W.* *c.* 21.
6 & 7 *W.* *c.* 12.
9 & 10 *W.* *c.* 25.
9 & 10 *W.* *c.* 44.
1 *An.* *ſt.* 2. *c.* 22.
8 *An.* *c.* 9.
9 *An.* *c.* 23.
10 *An.* *c.* 19.
10 *An.* *c.* 26.
12 *An.* *ſt.* 1. *c.* 2.
12 *An.* *ſt.* 2. *c.* 9.
5 *G.* *c.* 19.
6 *G.* *c.* 21.
11 *G.* *c.* 8.
12 *G.* *c.* 33.
16 *G.* 2. *c.* 26.
29 *G.* 2. *c.* 12.
29 *G.* 2. *c.* 13.
30 *G.* 2. *c.* 19.
31 *G.* 2. *c.* 31.
32 *G.* 2. *c.* 35.
2 *G.* 3. *c.* 36.
5 *G.* 3. *c.* 35, 46, 47.
7 *G.* 3. *c.* 44.
8 *G.* 3. *c.* 25.

2. In one of which ſtatutes (*viz.* 10 *An. c.* 19.) there is a clauſe which brings all the reſt within the juriſdiction of the juſtices of the peace, and almoſt the whole law relating to this title; and is as follows: Power of the juſtices in regard to theſe duties.

Two juſtices of the peace reſiding near the place where any pecuniary forfeitures not exceeding twenty pounds on any act touching any the duties under the management of the commiſſioners of the duties on ſtamped vellum, parchment, and paper, ſhall be incurred, or any offence againſt any of the ſame acts ſhall be committed in any wiſe relating to the ſame duties, by which any ſum of money only may be forfeited, may hear and determine the ſame; who ſhall on information or complaint, within a year after the ſeizure made or offence committed, ſummon the party accuſed, and witneſſes; and may iſſue warrants for levying the penalties by diſtreſs and ſale, if not redeemed in ſix days. 10 *An. c.* 19. *ſ.* 172.

And the ſaid juſtices where they ſee cauſe, may mitigate the penalties; the charges being firſt allowed: and ſo as they reduce not the penalty to leſs than double duty, over and above the ſaid charges. *ſ.* 173.

And perſons aggrieved may appeal to the next ſeſſions. *ſ.* 172.

And no certiorari ſhall ſuperſede the proceeding of the ſaid juſtices. *ſ.* 174.

And it is generally provided by the ſeveral acts, that the ſaid forfeitures ſhall be diſtributed, half to the king, and half to him that ſhall ſue. But by the 5 *G.* 3. *c.* 46. All penalties and forfeitures by that act, not therein otherwiſe ordered, ſhall be half to the king, and half to him that ſhall ſue in any court of record, with full coſts. *ſ.* 41.

3. The ſaid duties when brought together from the ſeveral acts, ſeem to be as followeth; The ſeveral ſtamp duties.

	By 5 *W.* *c.* 21.	By 9 & 10 *W.* *ſt.* 2. *c.* 25.	By 12 *A.* *ſt.* 2. *c.* 9.
(1) For every ſkin and piece of vellum or parchment, or ſheet of paper, on which ſhall be written any grant, or letters patents under the great ſeal, or the ſeal of the duchy of *Lancaſter*, or of any honour, dignity, promotion, franchiſe, liberty or privilege, or exemplifications, of the ſame (commiſſions of rebellion in proceſs, and charity			

briefs

	5 *W.* *c.* 21.	9 & 10 *W.* *c.* 25.	12 *A.* *ſt.* 2. *c.* 9.
briefs excepted) ſhall be paid ——	40*s.*	40*s.*	40*s.*
(2) Grant from the king of any ſum above 100 l. which ſhall paſs the great or privy ſeal ——	40*s.*	40*s.*	40*s.*
(3) Grant of any office above 50 *l.* a year — —	40*s.*	40*s.*	40*s.*
(4) Pardon of any crime or forfeiture, warrant of reprieve or relaxation from any fine, corporal puniſhment, or other forfeiture (general circuit or *Newgate* pardon excepted) —	40*s.*	40*s.*	40*s.*
(5) Dipenſation to hold two livings, or any diſpenſation or faculty from the archbiſhop of *Canterbury*, or maſter of the faculties ——	40*s.*	40*s.*	40*s.*
(6) Admittance of a fellow of the college of phyſicians, or of any attorney, clerk, advocate, proctor, notary, or other officer in any court whatſoever (except annual officers in corporations or inferior courts, whoſe office is under 10 *l.* a year, in ſalaries, fees, or other perquiſites) —	40*s.*	40*s.*	40*s.*
(7) Appeal from the court of admiralty, arches, or the prerogative courts — —	40*s.*	40*s.*	40*s.*
(8) Grant of lands in fee, leaſe for years, or other grant or profit (not herein particularly charged (under the great ſeal, or privy ſeal, or ſeal of the exchequer or duchy of *Lancaſter* —	40*s.*	40*s.*	
(9) Preſentation or donation under the great ſeal, collation, or any preſentation or donation by any patron to any ſpiritual promotion of 10 *l.* a year in the king's books.	40*s.*	40*s.*	
(10) Letters patent for charity briefs — —	40*s.*		
(11) General circuit or *Newgate* pardon — —	40*s.*		
(12) Regiſter, entry, teſtimonial, certificate of a degree in the univerſities or inns of court (except the re-			

giſter

	5 *W.* *c.* 21.	9 & 10 *W.* *c.* 25.	12 *A.* *ſt.* 2. *c.* 9.
giſter or entry of a batchelor of arts) 40 *s.*			
And by the 2 *G.* 3. *c.* 36. for the regiſter, entry teſtimonial, or certificate of the degree of utter barriſter in any of the four inns of court, 40 *s.* more. And by the 5 *G.* 3. *c.* 47. 6 *l.* more			
(13) Inſtitution, or licence, that ſhall paſs the ſeal of any biſhop, chancellor, or other ordinary, or any eccleſiaſtical court (except licences to ſchool-maſters and tutors) —	5 *s.*	5 *s.*	5 *s.*
(14) Letters of mart —	5 *s.*	5 *s.*	5 *s.*
(15) Exemplification that ſhall paſs the ſeal of any court —	5 *s.*	5 *s.*	
(16) Licence to ſchoolmaſters and tutors — —	5 *s.*	5 *s.*	
(17) Writ of error, certiorari, or appeal (except to the delegates) —	5 *s.*	5 *s.*	
(18) *Significavit pro corporis deliberatione* — —	5 *s.*	5 *s.*	
(19) Sentence in the admiral's court or cinque ports, or any attachment out of the ſaid courts, or relaxation of the attachment — —	5 *s.*	5 *s.*	
(20) Probate of a will, or letters of adminiſtration for an eſtate above 20 *l.* value (except of common ſeamen or ſoldiers ſlain or dead in the ſervice)	5 *s.*	5 *s.*	
(21) Recognizance, ſtatute ſtaple, or ſtatute merchant —	5 *s.*	5 *s.*	
(22) Conveyances, ſurrender of grants or offices releaſe or other deed inrolled of record in any court at *Weſtminſter*, or any court of record, or by any *cuſtos rotulorum*, or clerk of the peace — —	5 *s.*		
(23) Writ of covenant for levying of fines —	5 *s.*		
(24) Writ of entry for ſuffering a common recovery —	5 *s.*		
(25) Licence for, or certificate of marriage (except the certificate of the marriage of a ſeaman's widow)	5 *s.*		
(26) Writ of *habeas corpus* —	5 *s.*		

	5 *W.* *c.* 21.	9 & 10 *W.* *c.* 25.	12 *A.* *ſt.* 2. *c.* 9.
(27) Beneficial warrant or order under the king's ſign manual (except for the navy, army, and ordnance)	2*s.* 6*d.*	2*s.* 6*d.*	2*s.* 6*d.*
(18) Record of *Niſi Prius* or *Poſtea*	2*s.* 6*d.*	2*s.* 6*d.*	
(29) Judgement ſigned by the maſter of any office, or his deputy or ſecondary, or by any prothonotary or his ſecondary, deputy, or clerk, or other officer in the courts at *Weſtminſter*	2*s.* 6*d.*	2*s.* 6*d.*	
(30) Commiſſion iſſuing out of an eccleſiaſtical court, not otherwiſe particularly charged ——	2*s.* 6*d.*	2*s.* 6*d.*	
(31) Warrant, monition, or perſonal decree in any court of admiralty or the cinque ports ——	2*s.* 6*d.*	2*s.* 6*d.*	
(32) Transfer of ſtock in any company (over and above the duty of 2*s.* 3*d.* by the 10 *An.* *c.* 19. and other duties) — —			4*s.* 6*d.*
(33) Special bail in the court, and appearance thereon ——	1*s.*	1*s.*	
(34) Bill, anſwer, replication, rejoinder, interrogatories, depoſitions taken by commiſſion, or pleadings in any court of equity ——	1*s.*	1*s.*	
(35) Matriculation in the univerſities — —	1*s.*	1*s.*	
(36) Admiſſion into the inns of court — —	1*s.*	1*s.*	
And by the 2 *G.* 3. *c.* 36. 40*s.* more: And by the 5 *G.* 3. *c.* 47. 4*l.* more.			
(37) Indenture (except for pariſh apprentices) leaſe, or deed poll, not otherwiſe charged;			
Charter party, policy of aſſurance, paſſport, bond, releaſe, contract, or other obligatory inſtrument, proteſt, procuration, letter of attorney, or any other notarial act ——			6*d.*
Indenture (except for pariſh apprentices) leaſe or deed poll, not otherwiſe charged;			

Charter

	5 *W.* c. 21.	9 & 10 *W.* c. 25.	12 *A.* *ſt.* 2. c. 9.
Charter party, policy of aſſurance, paſſport, bond, releaſe, contract, or other obligatory inſtrument, proteſt, procuration, letter of attorney, or any other notarial act — —		6*d.*	
Indenture, leaſe, bond, or any deed not otherwiſe charged (except bail bonds and aſſignments thereof, and except indentures of pariſh apprentices) — —			6*d.*

Note; The above treble ſix penny inſtruments, being expreſſed with ſome confuſion, becauſe the ſame words which are in the 5 *W.* and 9 & 10 *W.* are not repeated in the 12th *An.* it is thought neceſſary to inſert them as they ſtand in the ſeveral acts.

(And moreover, by the 30 *G.* 2. *c.* 19. for every inſtrument ſo charged with a ſix penny ſtamp by the ſaid ſtatute of the 12 *An.* there ſhall be paid over and above all other duties, 1 *s.*)

By the 5 *G.* 3. *c.* 35. Whereas there is a doubt, whether policies of aſſurance and charter parties are to be ſtamped as deeds, by the 12 *An.* and 30 *G.* 2. it is declared, that the 6 *d.* by the 12 *An.* and 1 *s.* by the 30 *G.* 2. on *deeds not otherwiſe charged*, doth extend to policies of aſſurance and charter parties. *ſ.* 10.

And by the 10 *An.* *c.* 26. and 5 *G.* 3. *c.* 35. for a policy of aſſurance, there ſhall be further paid 2 *s.* 6 *d.* —

And by the 7 *G.* 3. *c.* 44. and 8 *G.* 3. *c.* 25. it ſhall be lawful to aſſure the properties of any number of perſons, in any ſhip, cargo, or both, to the amount of 1000 *l.* by a policy, with a 5 *s.* ſtamp. And all policies by which the property of one perſon, or of a particular number of perſons in one general partnerſhip, or of one bo-

dy

5 *W.* *c.* 21. 9 & 10 *W.* *c.* 24. 12 *A.* *ſt.* 2. *c.* 9.

dy politic or corporate, in any ſhip, cargo, or both, ſhall be aſſured to the amount of more than 1000 *l.* ſhall be ſtamped with two 5 *s.* ſtamps.

And every deed, inſtrument, note, memorandum, letter, or other minument or writing, between the captain or maſter or owner of any ſhip or veſſel, and any merchant, trader, or other perſon, in reſpect of the freight or conveyance of any money, goods, wares, merchandiſe, or effects on board of any ſuch ſhip or veſſel, ſhall be deemed a *charter party*. 5 *G.* 3. *c.* 35. *ſ.* 11.

(38) Decree or diſmiſſion in chancery, or other court of equity — — 6 *d.* 6 *d.*

(39) Affidavit (except for burying in woollen, and except before officers of the cuſtoms, or juſtices of the peace, and commiſſioners for levying any aids or duties) 6 *d.* 6 *d.*

(And by the 32 *G.* 2. *c.* 35. For every affidavit in any court of law or equity at *Weſtminſter*, great ſeſſions in *Wales*, or court of the county palatine of *Cheſter* (except as before excepted) 6 *d.* more)

(40) Copy of ſuch affidavit to be read or filed in any court —— 6 *d.* 6 *d.*

(And by the 32 *G.* 2. *c.* 35. For copies of the affidavits in the ſaid act, as before expreſſed, to be read or filed in any court, 6 *d.* more.)

(41) Original writ (except on which a *capias* iſſues) *ſubpœna*, bill of *Middleſex*, *latitat*, writ of *capias*, *quo minus*, *dedimus poteſtatem*, to take anſwers, examine witneſſes, or appoint guardians, and any other writ, proceſs or mandate iſſuing out of any court holding plea, where the debt or damage amounts to 40 *s.* (except writs of covenant for levying of fines, writs

of

	5 *W.* *c.* 21.	9 & 10 *W.* *c.* 25.	12 *A.* *ſt.* 2. *c.* 9.
of entry for common recoveries, and writs of *habeas corpus*) ——	6*d.*	6*d.*	
(And by the 12 *G.* *c.* 33. a further ſum of 6 *d.* And by the 32 *G.* 2. *c.* 35. 6 *d.* more.)			
(42) Entry of an action in the courts of corporation, and other courts, out of which no writ, proceſs, or mandate iſſues, holding plea, where the debt or damage amounts to 40 *s.*	6*d.*	6*d.*	
(43) Common bail in any court, and appearance thereon —	6*d.*	6*d.*	
(And by the 12 *G.* *c.* 33. a further ſum of 6 *d.* And by the 32 *G.* 2. *c.* 35. 6 *d.* more.)			
(44) Rule or order in any court at *Weſtminſter* — ——	6*d.*	6*d.*	
(And by the 32 *G.* 2. *c.* 35. a further ſum of 6 *d.*)			
(45) Copy of ſuch rule or order, or of any other record or proceedings in the ſaid courts, not otherwiſe charged — —	6*d.*	6*d.*	
(And by the 32 *G.* 2. *c.* 35. for every copy of ſuch rule or order 6 *d.* more.)			
(46) Citation or monition in an eccleſiaſtical court, libel, allegation, depoſition, anſwer, ſentence, or final decree, inventory, or any copies of them —— —	6*d.*	6*d.*	
(And by the 12 *G.* *c.* 33. for ſuch citation or monition 6 *d.* more.)			
(47) Indenture of pariſh apprentices	6*d.*		
(48) Declaration, plea, replication, rejoinder, demurrer, or other pleadings in any court of law	1*d.*	1*d.*	
(And by the 32 *G.* 2. *c.* 35. for every declaration, plea, replication, rejoinder, demurrer, or other pleadings, in any court of law at *Weſtminſter*, or in any courts of the principa-			

5 *W.* 9 & 12 *A.* c. 21. 10 *W.* *ſt.* 2. *c.* 25. *s.* 9.

lity of *Wales*, or of the counties palatine; a further ſum of 1 *d.*

(49) Copy thereof —— 1*d.* 1*d.*

(And by the 32 *G.* 2. 2. *c.* 35. for every copy of ſuch inſtrument, as ſpecified in the ſaid act, under the laſt preceding article; a further ſum of 1 *d.*)

(50) Depoſitions in chancery, or other court of equity (except the paper draughts of depoſitions taken by commiſſion before they are ingroſſed) not before charged; copy of any bill, anſwer, plea, demurrer, replication, rejoinder, interrogatories, depoſitions, or other proceedings in any courts of equity —— —— 1*d.* 1*d.*

(And by the 32 *G.* 2. *c.* 35. for every piece of paper or parchment, on which ſhall be written any depoſition in chancery or other court of equity at *Weſtminſter* (except the paper draughts of depoſitions taken by commiſſion before they are ingroſſed) copy of any bill, anſwer, plea, demurrer, replication, rejoinder, interrogatories, depoſitions, or other proceedings in ſuch courts of equity, a further ſum of 1 *d.*)

(51) Copy of a will —— 1*d.* 1*d.*

(Furthermore, beſides the duties principally impoſed by the three acts abovementioned, there are other duties by ſeveral other acts, as follows:)

(52) For every entry, minute, or memorandum, in the court book, roll, or record, of any corporation or company, of any admiſſion into ſuch corporation or company, 2 *s.* by the 5 *G.* 3. *c.* 46. *ſ.* 2.

And if any town clerk, or other proper officer, ſhall neglect or refuſe to make ſuch entry on the proper duty in the court book, roll, or record, within one month after any perſon ſhall be admitted; he ſhall forfeit 10 *l. id.*

(53) For every certificate or debenture for any drawback of cuſtoms, 8 *d.* by 9 *An.* *c.* 23.

(54) Bill

(54) Bill of lading ſigned for goods to be exported, 4 *d.* by 9 *An. c.* 23.

(55) Wine licence 4 *s.* by 9 *An. c.* 23. And by the 30 *G.* 2. *c.* 19. a further duty of 5 *l.* for perſons not having either ale or brandy licence; of 4 *l.* for perſons having an ale licence, and no brandy licence; and of 40 *s.* for perſons having both ale and brandy licence. And by the 31 *G.* 2. *c.* 31. the ſame is extended to ſweets or made wines.

(56) Licence for retailing beer, ale or other exciſeable liquors, 1 *s.* by 9 *An. c.* 23. and 20 *s.* more, by the 29 *G.* 2. *c.* 12.

And to prevent frauds therein, every victualler or alehouſe-keeper ſhall, on demand by any officer of the ſtamp duties, produce his licence, and permit him at his own expence to have a copy thereof; on pain of 40 *s.* 5 *G.* 3. *c.* 46. *ſ.* 20.

And every clerk of the peace, town clerk, common clerk, or perſon acting as ſuch, ſhall on demand by any officer of the ſtamp duties, or within three days next after, deliver to ſuch officer, a true liſt of the names and places of abode, of all the victuallers, alehouſekeepers and other perſons then licenſed to ſell ale or beer, or other exciſeable liquors, by retail, within their reſpective diſtricts; and on delivery thereof, ſuch officer ſhall pay to him after the rate of one farthing for every licenſed perſon inſerted in the liſt: And if he ſhall refuſe or neglect to deliver ſuch liſt, or not inſert therein a full and true account; he ſhall forfeit 5 *l.* *ſ.* 21.

(57) Surrender of, or admittance to a copyhold, or any grant or leaſe by copy of a court roll, or any other copy of the court roll of any honour or manor (except the original ſurrender to the uſe of a will, and the court roll or book, wherein the proceedings of the court are entered) 2 *s.* 3 *d.* by 10 *An. c.* 19.

And if any ſteward or other officer of any copyhold court ſhall demand and take from any perſon any fee for ſuch ſurrender, admittance, grant, or leaſe, or any other copy of any court roll, without at the ſame time demanding and receiving the ſtamp duty, and delivering to the perſon intitled to receive the ſame, or ſome perſon authoriſed by him, or if none, then to the bailiff of the manor to his uſe, the copy of ſuch ſurrender, admittance, grant, or leaſe, ſo ſoon after as the ſame can be properly prepared and made out, which ſhall be within a year at fartheſt, after the time of holding the court; he ſhall forfeit 10 *l.* 5 *G.* 3. *c.* 46. *ſ.* 7. 6 *G.* 3. *c.* 40. *ſ.* 3, 4.

But this ſhall not charge any copy of a ſurrender or admittance to a cuſtom right or tenant right eſtate, not being copyhold. 12 *An. ſt.* 1. *c.* 2. *ſ.* 49.

(58) By the 8 *An. c.* 9. Over and above the ſtamp duties upon the indenture, there ſhall be paid by the maſter, 6 *d.* for every 20 *s.* of every ſum of 50 *l.* or under; and the duty of 1 *s.* for every 20 *s.* of every ſum above 50 *l.* which ſhall be given or contracted for, in relation to any clerk, apprentice, or ſervant (except pariſh apprentices), and proportionably for greater or leſſer ſums.

And there are divers regulations concerning the ſame, which belong more properly to the title Apprentices; and therefore are there inſerted.

Writings exempted from ſtamps.

4. But none of theſe acts ſhall charge any bills of exchange, accounts, bills of parcels, bills of fees, or any bills or notes (not ſealed) for payment of money at ſight, or on demand, or at the end of certain days of payment. 5 *W. c.* 21. *ſ.* 5.

Nor any warrant made by, or recognizance taken before juſtices of the peace. 6 & 7 *W. c.* 12. *ſ.* 2.

Nor any warrants or inſtruments ſigned by the chief juſtices in eyre, or by any warden, lieutenant, or other officer of the king's foreſts or chaſes. 10 *An. c.* 26. *ſ.* 74.

Nor any proceedings of a court martial, which relate to the trial of any common ſoldier. 6 & 7 *W. c.* 12. *ſ.* 2.

Nor any orders, decrees, or proceedings before commiſſioners of the ſewers. 6 & 7 *W. c.* 12. *ſ.* 2.

Nor in the court of ſtannaries. *id.*

Likewiſe perſons admitted to ſue or defend *in forma pauperis* ſhall not be liable to the ſtamp duties. 5 *W. c.* 21. *ſ.* 14.

Inſtead of ſeveral ſtamps, there may be one general ſtamp for the whole.

5. And to prevent the multiplication of ſtamps, upon ſuch pieces of vellum or parchment, or ſheets or pieces of paper, on which ſeveral duties are by ſeveral acts impoſed; it ſhall be lawful for the commiſſioners, inſtead of the diſtinct ſtamps directed by the ſeveral acts, to cauſe one ſtamp to be provided to denote the ſaid ſeveral duties. 30 *G.* 2. *c.* 19. *ſ.* 18.

Officers for the ſtamp duties.

6. For the management of the ſtamp duties, the king may appoint commiſſioners; who ſhall ſubſtitute inferior officers. 5 *W. c.* 21. *ſ.* 7. 9 & 10 *W. c.* 25. *ſ.* 48.

And with regard to the duties on the ſeveral acts before the 8 *An.* the ſaid officers, before they ſhall act, ſhall take an oath for the due execution of their office, before one or more of the commiſſioners; and by the ſaid act of the 8 *An.*

and

and the ſubſequent acts, they may take the ſaid oath, with reſpect to the duties on thoſe acts, before one or more of the commiſſioners, or a juſtice of the peace.

Price of the paper to be ſtamped.

7. The commiſſioners of the treaſury ſhall once a year at leaſt ſet the prices of ſtamped parchment and paper; and the commiſſioners of the ſtamp duties ſhall (beſides the ſtamps abovementioned) ſtamp the ſaid price upon every piece of parchment and paper. 6 & 7 *W.* *c.* 12. *ſ.* 9.

Allowance on prompt payment.

8. By the ſeveral acts, the commiſſioners ſhall make an allowance (of four *per cent.* for ſix months, 5 *G.* 3. *c.* 46. *ſ.* 5. 6.) for prompt payment, to perſons who ſhall bring parchment or paper to be ſtamped, or buy the ſame of them ſo ſtamped, the duty whereof ſhall amount to 10. *l.* or upwards, at any one time, (except in the caſe of ſtamps for wine licences, by the 32 *G.* 2. *c.* 19.)

Penalty for writing before ſtamped.

9. If any perſon ſhall write on any paper or parchment, before it be duly ſtamped as by the 5 *W.* he ſhall forfeit 5 *l.* (And by the 9 & 10 *W.* 5 *l.* more.) And an officer offending, ſhall over and above forfeit his office. And an attorney offending ſhall be diſabled to practiſe. 5 *W.* *c.* 21, *ſ.* 11.

And if any inſtrument ſhall be written by any perſon (not being a known clerk or officer in reſpect of his office intitled to write the ſame) on paper or parchment not duly ſtamped, there ſhall be paid over and above the duty the ſum of 5 *l.* (and by the 10 & 11 *W.* 5 *l.* more); and the inſtrument ſhall not be given in evidence in any court, until both the duty and the ſaid ſum ſhall be paid, and a receipt produced for the ſame, under the hand of ſome officer appointed to receive the duties, and until the ſame ſhall be ſtamped. 5 *W.* *c.* 21. *ſ.* 11.

And by the 9 *An.* *c.* 23. If any officer of the cuſtoms ſhall ſign any debenture not ſtamped, or if any other perſon ſhall write any debenture, bill of lading, or licence by that act charged with the ſtamp duties, or ſign ſuch bill of lading; he ſhall forfeit 10 *l.* with coſts: and an officer of the cuſtoms offending ſhall moreover forfeit his office. And there ſhall be paid for the ſame, over and above the duties, 5 *l.* to the king; and the inſtrument ſhall not be available till that be done.

And by the 10 *An.* *c.* 19. If any the matters required to be ſtamped by that act, ſhall be ingroſſed on paper not ſtamped, there ſhall be paid for the ſame (over and above the duties) 5 *l.* in like manner.

M. 13 *G.* *K.* and *Reeks.* Upon a trial at bar, on an information in nature of a *quo warranto* for the office of bur-

geſs of *Chriſt Church*, the admiſſion of the defendant was produced, and it appeared to be a parchment that had only one ſtamp, and yet had five admiſſions entered upon it. And in order to make it good, they had annexed four other parchments, each of which was ſtamped. And the court held, that would not make it good; and that the proper way would have been, to have paid the four penalties, and to have had four new ſtamps on the firſt parchment. And for want of this there was a verdict againſt this and the other four defendants. *Str.* 716. 1 *Barnardiſt.* 8.

Clerk not entring inſtruments charged with the ſtamp duties.

10. And to prevent frauds, if any clerk or other officer ſhall neglect to enter or file any action, plaint, bill, appearance, admiſſion, or other thing in reſpect whereof any duty is payable, for four months; or ſhall not file the ſame before any ſubſequent proceeding ſhall be entred; or ſhall file any ſuch ſubſequent proceeding before the other ſhall have been filed as aforeſaid; he ſhall forfeit 20*l.* Except where judgment is entred by confeſſion. 1 *An. ſt.* 2. *c.* 22. *ſ.* 1.

Officers to ſuffer their books to be inſpected.

11. And all publick officers, who ſhall have in their cuſtody any books, papers, files, records, remembrances, dockets, or proceedings, the ſight or knowledge whereof may tend to ſecure any of the ſtamp duties, or to the diſcovery of any fraud or omiſſion in relation thereto, ſhall, at ſeaſonable times, permit any officer authoriſed by the commiſſioners to inſpect the ſame, and take notes thereout, without fee; on pain of 50*l.* 5 *G.* 3. *c.* 46. *ſ.* 38.

Writing to be near the ſtamp.

12. And the writing ſhall be either upon, or as near as conveniently may be to the ſtamp; on pain of 10*l.* with full coſts. 1 *An. ſt.* 2. *c.* 22. *ſ.* 5.

The ſame ſtamp not to ſerve twice.

13. If any perſon ſhall write any thing, in reſpect whereof the ſtamp duties are payable, on any piece of paper or parchment, whereon there ſhall have been before any writing in reſpect whereof any duty was payable, before the ſame hath been again ſtamped; or, ſhall eraſe or ſcrape out any name, ſum, date, or other thing, or fraudulently take off any ſtamp, with intent to uſe it in any other thing in reſpect whereof any duty is payable; he ſhall forfeit in like manner as for writing on paper unſtamped, and alſo 20*l.* with full coſts. 1 *An. ſt.* 2. *c.* 22. *ſ.* 2, 3.

Stamps ſpoiled;

14. Stamps ſpoiled before the writing thereon hath been executed, may, upon oath made thereof before the commiſſioners, be exchanged at the ſtamp office. 5 *G.* 3. *c.* 46. *ſ.* 39.

15. By

15. By the ſeveral acts, if any perſon ſhall counterfeit the ſtamps, or cauſe or procure them to be counterfeited, or knowingly ſell any paper with ſuch counterfeit ſtamp; he ſhall be guilty of felony without benefit of clergy. Counterfeiting the ſtamps.

16. By the 5 *G.* 3. *c.* 46. If any perſon ſhall fraudulently uſe any of the ſtamps provided by this or any former act; he ſhall be guilty of felony without benefit of clergy. *ſ.* 40. Fraudulently uſing the true ſtamps.

17. For every ſheet almanack, for one year or leſs, printed on one ſide only, ſhall be paid 1 *d.* by the 9 *An.* *c.* 23. and 1 *d.* more by the 30 *G.* 2. *c.* 19. Stamp duty on almanacks.

For every other almanack for one year, 2 *d.* by the 9 *An.* *c.* 23. and 2 *d.* more by the 30 *G.* 2. *c.* 19.

And if for more than one year, then 2 *d.* a year, by the 9 *An.* *c.* 23. but ſo as not to charge any almanack for more than if it were made for three years only. *ſ.* 53. And by the 30 *G.* 2. *c.* 19. a further duty is laid upon every ſuch almanack of 2 *d.* for every ſuch year.

And all books and pamphlets, ſerving chiefly to the purpoſe of an almanack, ſhall be charged as almanacks. 10 *An.* *c.* 9. *ſ.* 175.

But where an almanack contains more than one ſheet, one ſheet only need to be ſtamped. 9 *An.* *c.* 23. *ſ.* 26.

And if any perſon ſhall expoſe to ſale any almanack unſtamped, he ſhall be puniſhed as hawkers of unſtamped news papers by the 16 *G.* 2. *c.* 26. (hereafter following); and every perſon who ſhall apprehend ſuch offender, ſhall have the like reward as by the ſaid act is granted for apprehending offenders againſt the ſaid act. 30 *G.* 2. *c.* 19. *ſ.* 26.

18. By the 11 *G.* *c.* 8. for every journal, mercury, or other publick news-paper, ſhall be paid 1 *d.* a ſheet, and $\frac{1}{2}$ *d.* for every half ſheet. And by the 30 *G.* 2. *c.* 19. for every news-paper whether on a half ſheet or leſs or more, and not exceeding one ſheet, $\frac{1}{2}$ *d* more. Duty on news papers and pamphlets.

For every pamphlet contained in half a ſheet of paper, $\frac{1}{2}$ *d.* 10 *An.* *c.* 19. *ſ.* 101.

Pamphlet larger than half a ſheet, not exceeding a whole ſheet, for every printed copy thereof, 1 *d.* *id.*

Pamphlet above one ſheet, and not exceeding ſix ſheets in *octavo*, or a leſſer page, nor exceeding 12 ſheets in *quarto*, or 20 ſheets in *folio*, for every ſheet which ſhall be contained in one printed copy thereof, 2 *s.* *id.*

But news papers printed on a ſheet and a half of paper, ſhall not pay as pamphlets, only 3 *s.* for each impreſſion. 11 *G.* *c.* 8. *ſ.* 13.

(But nothing herein ſhall charge any act of parliament, proclamation, order of council, form of prayer, or other act of ſtate, printed votes, ſchool books, books of devotion, daily accounts of imports and exports, nor weekly bills of mortality. 10 *An. c.* 19. *ſ.* 102.)

And if any perſon ſhall write, print, or expoſe to ſale any ſuch pamphlet or news-paper (the ſaid pamphlet exceeding one ſheet only excepted) before the paper ſhall be ſtamped; he ſhall forfeit 10 *l.* with full coſts. 10 *An. c.* 19. *ſ.* 105.

And a printed copy of every pamphlet containing more than one ſheet, ſhall (within the bills of mortality) in ſix days after printing be brought to the head office, and the title, number of ſheets, and duty ſhall be entered in a book, and the duty thereupon paid to the receiver general, who ſhall give a receipt for the ſame on ſuch printed copy, or the ſame ſhall be ſtamped to denote the payment: Without the bills, it ſhall be brought in 14 days to ſome head collector of the ſtamp duties, who ſhall enter the title, number of ſheets, and duty, which duty ſhall be thereupon paid to the collector, who ſhall give a receipt for the ſame on ſuch printed copy. 10 *An. c.* 19. *ſ.* 111.

And if any ſuch pamphlet containing more than one ſheet, ſhall be printed or publiſhed, and the duty not paid, and title regiſtered, and one copy ſtamped where required ſo to be, within the time above limited; the author printer, and publiſher, and all other perſpns concerned, ſhall loſe all property therein, and in every copy thereof, and ſhall alſo forfeit 20 *l.* with will coſts. *id.* 112.

And no perſon ſhall expoſe to ſale any ſuch pamphlet, without the name and place of abode of ſome known perſon, by or for whom it was printed or publiſhed, written or printed thereon; on pain of 20 *l.* *id. ſ.* 113.

And pamphlets unſold ſhall be cancelled by the commiſſioners, and the like number of other ſheets ſtamped *gratis* ſhall be changed for them. *id. ſ.* 114.

And two juſtices may hear and determine offences in relation to pamphlets or news papers on this act, in like manner as above is mentioned; and mitigate the penalty, ſo as they do not reduce it lower than one fourth part, over and above the coſts: and where goods of the offender cannot be found, may commit him to priſon till paid. *ſ.* 120.

And by the 16 *G.* 2. *c.* 26. If any perſon ſhall ſell, or expoſe to ſale, any news-paper, or any book, pamphlet, or paper, deemed to be a news-paper, unſtamped; any juſtice of

of the peace may commit him (being convicted before him by confeſſion, or oath of one witneſs) to the houſe of correction for any time not exceeding three months: And any perſon may apprehend and carry him before ſuch juſtice: And on producing a certificate of ſuch conviction, under the hand of ſuch juſtice (which he ſhall give without fee), ſhall have a reward of 20 *s.* to be paid by the receiver general of the ſtampt duties. *ſ.* 5.

Duty on advertiſements in news papers.

19. For every advertiſement in the gazette, or other printed paper, publiſhed weekly or oftener, ſhall be paid 1 *s.* by the 10 *An. c.* 19. *ſ.* 101. and 1 *s.* more by the 30 *G.* 2. *c.* 19. *ſ.* 1.

And for every advertiſement contained in or publiſhed with any paper or pamphlet, yearly, monthly, or at any interval of time exceeding one week, 2 *s.* 30 *G.* 2. *c.* 19. *ſ.* 1.

And the ſaid duty on advertiſements ſhall be paid, within 30 days after the printing or publication, to the receiver general or his deputy, within the bills; or elſewhere to the next adjacent head officer: on pain of treble duty, with full coſts. 10 *An. c.* 19. *ſ.* 118.

And no ſtamps ſhall be delivered out for printing any pamphlet or any publick news, to be contained in one ſheet or any leſſer piece of paper; unleſs the perſon applying for the ſame ſhall firſt give ſecurity to his majeſty for payment of the ſaid duties on advertiſements to be printed thereon. 5 *G.* 3. *c.* 46. *ſ.* 8.

But nothing herein ſhall extend to any ſingle advertiſement printed by itſelf.

Duty on cards and dice.

20. Laſt of all, it is thought proper to inſert here the regulations concerning the duties on cards and dice; they being likewiſe under the management of the commiſſioners of the ſtamp duties; and not of ſmall conſideration, ſince a man may be guilty of offences even with reſpect to theſe, for which he ſhall loſe his life.

(1) By the 10 *An. c.* 19. No playing cards or dice ſhall be imported. *ſ.* 167.

(2) For every pack of cards made in *Great Britain*, ſhall be paid 6 *d.* 9 *An. c.* 23. and 6 *d.* more, by the 29 *G.* 2. *c.* 13.

And for every pair of dice, 5 *s.* 9 *An. c.* 23. and 5 *s.* more, by the 29 *G.* 2. *c.* 13.

(3) And all pieces of ivory, bone, or other matter made or uſed for any game or play, with any ſpots or other marks thereon, to denote any chance, ſhall be deemed dice. 10 *An. c.* 19. *ſ.* 168.

(4) All makers of cards or dice, before they begin to make them, ſhall give notice in writing of the houſe or place where they intend to make them, to the commiſſioners of the ſtamp duties, or their officer next adjacent, on pain of 50*l.* 9 *Ann. c.* 23. *ſ.* 41. And alſo all the cards, dice, materials, and utenſils ſhall be forfeited. 10 *An. c.* 19. *ſ.* 166.

(5) And every maker of cards ſhall ſend to the commiſſioners a ſufficient quantity of paper, in order to have as many aces of ſpades impreſſed thereon as ſuch maker ſhall deſire; and every pack of cards ſhall have one ſuch ace ſo impreſſed: And the commiſſioners ſhall cauſe a ſtamp to be prepared, with ſuch device as they ſhall think proper, to denote the ſaid ace of ſpades, as well in every pack made for uſe in *Great Britain*, as in every pack made for exportation; ſo as in ſuch device there be ſome diſtinguiſhing mark, between cards for home, and cards for foreign conſumption. 5 *G.* 3. *c.* 46. *ſ.* 9.

(6) And the maker ſhall alſo ſend to the commiſſioners or their officers, jews or wrappers made for encloſing cards for uſe in *Great Britain*, with his name and any other particular word or thing printed thereon, as the commiſſioners ſhall direct; in order that the ſame may be ſtamped and delivered again, from time to time, to ſuch maker, as occaſion ſhall require: And the commiſſioners ſhall denote one of the ſixpenny duties charged on cards in *Great Britain*, on ſuch jew or wrapper. 5 *G.* 3. *c.* 46. *ſ.* 10.

(7) And the officers may enter any houſe or place where cards or dice are made, ſold, or expoſed to ſale, or ſuſpected to be privately made, or into any publick gaming houſe, room, or place, and there ſearch and ſee what quantity of cards or dice ſhall be making, and whether they be ſtamped; and if the owner or occupier ſhall refuſe entrance or liberty of ſearch, he ſhall forfeit 10*l.* 10 *An. c.* 19. *ſ.* 169.

(8) And if the commiſſioners be informed, or have cauſe to ſuſpect, that any perſon makes cards or dice in a place not entered, on affidavit thereof by the informer before a juſtice of the peace declaring the grounds of his ſuſpicion; the officer may in the day time, and in the preſence of a conſtable by warrant of ſuch juſtice break open the door, or any part of ſuch private place, and enter, and ſeize all ſuch cards, dice, tools, or materials; and if not replevied in five days, they ſhall be forfeited and ſold. 6 *G. c.* 21. *ſ.* 59.

(9) And

(9) And no materials began to be wrought for cards or dice, ſhall be moved until they be compleatly made, or the duties paid; on pain of double duty. 10 *An. c.* 19. *ſ.* 166.

(10) And no maker of cards or dice, ſhall remove the ſame from the place of making, until ſuch mark upon the dice, and ſuch ſeal upon the paper and thread incloſing every pack of cards ſhall be put thereon, as the commiſſioners ſhall appoint; on pain of forfeiting the ſame, and treble value. 9 *An. c.* 23. *ſ.* 41.

(11) And every maker of cards and dice, who ſhall endeavour to defraud the king by any concealment, ſhall forfeit 20*l.* 9 *An. c.* 23. *ſ.* 42.

(12) The makers of cards and dice ſhall once in every 28 days make entry upon oath with the proper officer, of all the cards and dice by them made within the ſaid time; on pain of 20*l.* 9 *An. c.* 23. *ſ.* 42.

And the card maker ſhall be obliged at the reſpective times of entering, to give bond with ſurety of treble the duty, for payment of the duties in ſix weeks. 6 *G. c.* 21. *ſ.* 57.

(13) And the maker of cards and dice ſhall once in every ſix weeks clear off the duties; on pain of double duty. 9 *An. c.* 23. *ſ.* 42.

And if the card maker ſhall on entry pay down the duty, he ſhall have the like allowance as for preſent payment of the ſtamp duties by the 1 *An. ſt.* 2. *c.* 22. (That is, he ſhall have an abatement after the rate of 6*l. per cent. per annum*, for ſix months.) 6 *G. c.* 21. *ſ.* 58.

(14) And no cards or dice ſhall be expoſed to ſale, or uſed in play in any public gaming houſe, unleſs the paper and thread incloſing the ſame ſhall have been reſpectively ſealed and ſtamped, and unleſs one of the cards of each pack ſhall be alſo ſtamped on the ſpotted ſide; on pain that every perſon who ſhall expoſe to ſale any ſuch cards or dice not ſtamped, ſhall forfeit for every ſuch pack, and for every one of ſuch dice, 5*l.* with full coſts. 10 *An. c.* 19. *ſ.* 162.

(15) And by the 6 *G. c.* 21. If any perſon ſhall take off the ſtamp of playing cards (in order to put it on a new pack) or ſquare or new ſpot any dice which have been played with, or ſhall incloſe any pack of cards in an outſide paper which hath been uſed before, or ſhall ſell any cards not ſtamped, and incloſed in paper and thread ſealed and ſtamped; he ſhall forfeit 10*l.* with full coſts. *ſ.* 55.

(16) And

(16) And by the 5 *G.* 3. *c.* 46. If any maker ſhall uſe in the making up of any pack of cards, any ace of ſpades, jew, or wrapper, that has been uſed before; he ſhall forfeit 20*l.* *ſ.* 13.

(17) And if any perſon ſhall ſell or buy any ſuch ace of ſpades, jew, or wrapper, in order to be made uſe of for the incloſing any pack or parcel of cards; he ſhall forfeit 20*l.* And if either the buyer or ſeller ſhall inform againſt the other; his evidence ſhall be admitted, and he ſhall be indemnified. 5 *G.* 3. *c.* 46. *ſ.* 14, 15.

(18) And if any perſon ſhall ſell any cards called waſte cards, unleſs before ſale he mark the back or plain ſide of every ſuch card, ſo as to render it unfit to be uſed in playing; he ſhall forfeit 20*l.* 29 *G.* 2. *c.* 13. *ſ.* 10.

(19) If any pack or part thereof ſhall be damaged in making; then, on oath made thereof by the maker before three commiſſioners, he ſhall be allowed another ace of ſpades, inſtead of that which was ſpoiled. 5 *G.* 3. *c.* 46. *ſ.* 12.

(20) And if any perſon ſhall counterfeit the ſtamps on cards or dice, or on any jew, wrapper, or thread incloſing the ſame; or knowingly ſell the ſame with a counterfeit ſtamp; or fraudulently uſe any of the ſtamps provided by the commiſſioners; he ſhall be guilty of felony without benefit of clergy. 10 *An.* *c.* 19. *ſ.* 163. 29 *G.* 2. *c.* 13. *ſ.* 5. 5 *G.* 3. *c.* 46. *ſ.* 40.

(21) Nevertheleſs it ſhall be lawful to remove cards or dice from the place where they are made, without ſtamping or paying duty, provided that within a month after they are made, and before they be removed, bond of double the duty be given, that they ſhall be exported and not relanded. 10 *An.* *c.* 19. *ſ.* 170. 5 *G.* *c.* 19. *ſ.* 48.

(22) But cards intended for exportation ſhall before packing for exportation be incloſed in paper and thread, in packs or parcels, and be marked on the ſpotted ſide, in ſuch manner as the commiſſioners ſhall direct; and if any perſon ſhall ſell or expoſe to ſale to be uſed in *Great Britain*, or ſhall uſe or permit to be uſed in any publick gaming houſe any cards ſo marked as for exportation; he ſhall forfeit 20*l.* for every ſuch pack. 29 *G.* 2. *c.* 13. *ſ.* 6.

(23) If any perſon ſhall reland, or procure to be relanded, any parcel of cards, after having been entered and ſhipped for exportation; he ſhall forfeit 50*l.* But if any perſon concerned ſhall inform againſt an accomplice; he ſhall be admitted to give evidence, and be indemnified. 5 *G.* 3. *c.* 46. *ſ.* 16, 17.

Star.

Star. See Bent.
Starch. See Excise.

Stocks.

IT is said, that every vill of common right is bound to provide a pair of stocks. 2 *Haw.* 73.

And the constable by the common law, may confine offenders in the stocks, by way of security, but not by way of punishment.

But by divers statutes, the stocks is also appointed for the punishment of offenders in sundry cases, after conviction.

Stock of companies.

IF any person shall forge or counterfeit any power or authority to transfer any share of any capital stock of any company established by act of parliament, or to receive the same, or shall forge or counterfeit the name of any proprietor, or person intitled to a dividend, or shall fraudulently demand, or endeavour to have any such share received by virtue of such counterfeit instrument, or shall personate any proprietor of any such share of such stock; he shall be guilty of felony without benefit of clergy. 8 *G. c.* 22. *s.* 1.

Stolen goods. See Search warrant, restitution.

Stores.

Imbezzling to the value of 20s.

1. IF any perſon having the charge or cuſtody of any of the king's armour, ordnance, ammunition, ſhot, powder, or habiliments of war, or of any victuals provided for victualling the army, ſhall for lucre or gain, wittingly, adviſedly, and of purpoſe, to hinder his majeſty's ſervice, imbezzle, purloin, or convey away the ſame to the value of 20*s.* or ſhall feloniouſly ſteal or imbezzle any of his majeſty's ſails, cordage, or any other of his majeſty's naval ſtores, to the like value of 20*s.* he ſhall (on proſecution within a year) be adjudged guilty of felony without benefit clergy. 31 *El. c.* 4. 22 *C.* 2. *c.* 5.

Under the value of 20s.

2. And any of the principal officers or commiſſioners of the navy, may iſſue warrants to ſearch for the ſame, and puniſh the offenders by fine not exceeding 20*s.* or impriſonment not exceeding one week, the value of the goods not exceeding 20*s.* and if the offence requires a higher puniſhment, may commit him till he finds ſureties to appear in the exchequer, or other court where the king ſhall queſtion him for the ſame, within one year on proceſs duly ſerved for that purpoſe on ſuch offender. 1 *G. ſt.* 2. *c.* 25. *ſ.* 3.

Counterfeiting a naval officer's hand.

3. And every perſon who ſhall counterfeit the hand of any officer of the navy to any paper whereby his majeſty's naval treaſure may be diſpoſed of, or knowingly produce the ſame, he may be bound over by the ſaid officers and commiſſioners, or any of them, until he find ſurety to appear at the next aſſizes or quarter ſeſſions, to be there proceeded againſt according to law. 1 *G. ſt.* 2. *c.* 25. *ſ.* 6.

Making ſtores with the king's mark.

4. No perſon, other than perſons authorized by contracting with his majeſty's officers, ſhall make any ſtores of war or naval ſtores with the king's mark, that is, cordage of 3 inches and upwards with a white thread laid the contrary way, or any ſmaller cordage with a twine in lieu of white thread laid the contrary way, or any canvaſs with a blue ſtreak in the middle, or any other ſtores with the broad arrow: on pain of forfeiting the ſame, and 200*l.* with coſts (on conviction at the aſſizes or ſeſſions. 17 *G.* 2. *c.* 40. *ſ.* 10, 11.) half to the king, and half to the informer. 9 & 10 *W. c.* 41.

And ſuch perſon in whoſe cuſtody ſuch goods or ſtores ſo marked (or any timber, thick ſtuff, or plank, marked

with the broad arrow, 9 *G. c.* 8. *ſ.* 3.) ſhall be found, ſhall forfeit the ſame and 200 *l.* with coſts in like manner, and be impriſoned till paid, unleſs he ſhall upon trial produce a certificate from three principal officers of the navy, expreſſing the quantity, and on what occaſion he came by them. 9 & 10 *W. c.* 41.

But the judge or juſtices may mitigate the penalty as they ſhall ſee cauſe, and may commit the offender to gaol till payment, or may puniſh him corporally by cauſing him to be publickly whipped, or committed to ſome publick workhouſe to be kept to hard labour for 6 months or a leſs time. 9 *G. c.* 8. *ſ.* 4.

5. Imbezzling or purloining of armour, ſtores, naval proviſions, and other habiliments of war, are excepted out of the general pardon of the 20 *G.* 2. *c.* 52.

Stray. See **Eſtray.**
Subornation. See **Perjury.**
Sunday. See **Lord's Day.**

Surety for the peace.

OUT of the *Latin* word *pax*, the *Normans* formed their *paix*, and we (out of that) our *peace*, Lamb. 5.

Surety for the peace is the acknowledging a recognizance, or bond, to the king, taken by a competent judge of record, for the keeping the peace. *Dalt. c.* 116.

And this ſurety of the peace, every juſtice of the peace may take and command by a twofold authority: 1. As a miniſter, commanded thereto by a higher authority: as when a writ of *ſupplicavit*, directed out of the chancery or king's bench, is delivered to him. 2. As a judge, and by virtue of his office, derived from his commiſſion. *Dalt. c.* 116.

Concerning which I will ſhew,

I. For what cauſe ſurety of the peace ſhall be granted.

II. At

II. At whoſe requeſt it ſhall be granted.

III. Againſt whom it ſhall be granted.

IV. In what manner it ſhall be granted.

V. How the peace warrant may be ſuperſeded.

VI. How the peace warrant ſhall be executed.

VII. What ought to be the form of a recognizance of the peace.

VIII. How ſuch recognizance ſhall be certified.

IX. How ſuch recognizance may be forfeited.

X. How the recognizance being forfeited ſhall be proceeded on.

XI. How ſuch recognizance may be diſcharged.

I. For what cauſe ſurety of the peace ſhall be granted.

1. By the commiſſion of the peace, one or more juſtices have power *to cauſe to come before them, all thoſe who to any of the king's people concerning their bodies, or the firing of their houſes, have uſed threats, to find ſufficient ſecurity for the peace of their good behaviour towards the king and his people: and if they ſhall refuſe to find ſuch ſecurity, to cauſe them in the king's priſons to be ſafely kept, until they ſhall find ſuch ſecurity.*

2. Upon which Mr. *Hawkins* obſerves, that it ſeemeth clear, that wherever a perſon has juſt cauſe to fear, that another will burn his houſe, or do him a corporal hurt, as by killing or beating him, or that he will procure others to do him ſuch miſchief, he may demand the ſurety of the peace againſt ſuch perſon, and that every juſtice of the peace is bound to grant it, upon the party's giving him ſatisfaction upon oath, that he is actually under ſuch fear, and that he has juſt cauſe to be ſo, by reaſon of the other's having threatened to beat him, or lain in wait for that purpoſe; and that he doth not require it out of malice, or for vexation. 1 *Haw.* 127.

3. Alſo it ſeems the better opinion, that he who is threatened to be *impriſoned* by another, has a right to demand the ſurety of the peace; for every unlawful impriſonment is an aſſault and wrong to the perſon of a man. And the objection, that one wrongfully impriſoned may recover damages in an action, and therefore needs not the

ſurety

ſurety of the peace, is as ſtrong in the caſe of battery as impriſonment; and yet there is no doubt, but that one threatened to be beaten, may demand the ſurety of the peace. 1 *Haw.* 127.

4. But if the juſtice ſhall perceive that ſurety is demanded merely of malice, or for vexation only, without any juſt cauſe of fear, it ſeemeth he may ſafely deny it. As in common experience we find it, that where a perſon ſhall upon a juſt cauſe come and crave the peace againſt another, and hath it granted to him; when ſuch other perſon ſhall come before the juſtice, he likewiſe will crave the peace againſt the former, and will perhaps ſurmiſe ſome cauſe; but yet will nevertheleſs be content to ſurceaſe his ſuit and demand, ſo as the other will relinquiſh to have the peace againſt him: Here the juſtice ſhall do well not to be too forward in granting the peace thus required by the latter, but to perſuade him, and to ſhew him the danger of his oath which he is to take; but yet if he will not be perſuaded, but will take his oath, that he is in fear, where indeed he neither doth fear, nor hath cauſe to fear, this oath ſhall diſcharge the juſtice, and the fault ſhall remain on ſuch complainant. *Dalt. c.* 116.

5. Alſo, if a man will require the peace, becauſe he is *at variance*, or in *ſuit* with his neighbour, it ſhall not be granted. *Dalt. c.* 116.

6. Alſo Mr. *Lambard* ſays, he takes it to be ſomewhat clear, that a juſtice may not by the commiſſion award a precept of the peace, in behalf of a man that will require it, becauſe he feareth that he will do harm to his *ſervants* or *cattle*. Lamb. 83.

And Mr. *Dalton* ſays, where a man is in fear that another will hurt his ſervants, or his cattle, or other goods, this ſurety of the peace ſhall not be granted by the juſtice. But in this caſe *Fitzherbert* ſaith, the party may have a ſpecial writ out of the chancery directed to the ſheriff, that he ſhall cauſe ſuch perſon to find ſurety, that he ſhall do no hurt or damage to the other man in his body, or to his ſervants or goods; and if he will not find ſurety, that then he ſhall arreſt and detain him in priſon until he ſhall find ſurety. *Dalt. c.* 116.

And the reaſon why a man may not have ſureties of the peace againſt another, for that he feareth he will do harm to his *ſervants*, ſeemeth to be, becauſe it ſhould be the *ſervant*'s fear in ſuch caſe, and not the *maſter*'s; and the ſervant's own oath before the juſtice is neceſſary. And as to his *goods*, it ſeemeth clear, that no ſureties of the peace

ought to be granted in that caſe; for the recognizance of the peace when taken, is only that the party ſhall keep the peace towards the king and all his liege people.

But Mr. *Dalton* ſays, that if a man ſhall threaten to hurt his *wife*, or *child*, he thinks he may crave the peace at the juſtice's hands, by the words of the commiſſion, and that the juſtice ought to grant it. *Dalt. c.* 116.

7. Note alſo, the ſurety of the peace ſhall not be granted, but where there is a fear of ſome preſent or future danger, and not merely for a battery or treſpaſs that is paſt, or for any breach of the peace that is paſt: for this ſurety of the peace is only for the ſecurity of ſuch as are in fear: But the party wronged may puniſh the offender by indictment; and the juſtice, if he ſee cauſe, may bind over the affrayer. *Dalt. c.* 116. That is, he may bind him over to anſwer unto the indictment.

II. At whoſe requeſt it ſhall be granted.

1. As to this, Mr. *Hawkins* ſays, It ſeems to be agreed at this day, that all perſons whatſoever, under the king's protection, being of *ſane memory*, whether they be natural and good ſubjects, or *aliens*, or *excommunicate*, or attainted of *treaſon*, have a right to demand ſurety of the peace. And it is certain, a *wife* may demand it againſt her huſband threatening to beat her outrageouſly, and that a *huſband* alſo may have it againſt his wife. 1 *Haw.* 126. *Crom.* 118.

Upon which Maſter *Crompton* obſerveth, that if the wife in ſuch caſe cannot find ſureties, ſhe ſhall be committed; and ſo, ſays he, a man may be rid of a ſhrew. *Crom.* 118.

2. And Mr. *Dalton* ſays, an infant under the age of 14 years, may demand this ſurety, and it ſhall be granted him. *Dalt. c.* 117.

3. But as to a perſon of *non ſane memory*, Mr. *Dalton* ſays, this ſurety ſhall neither be granted againſt him nor to him upon his own requeſt; but yet if there ſhall be cauſe, the juſtice ought to provide for his ſafety. *Dalt. c.* 117.

III. Againſt whom it ſhall be granted.

There ſeems to be no doubt, but that it ought, upon a juſt cauſe of complaint, to he granted by any juſtice of the peace, againſt any perſon whatſoever, under the degree of nobility,

nobility, being of ſane memory, whether he be a magiſtrate or private perſon, and whether he be of full age, or under age. But infants and femes covert ought to find ſecurity by their friends, and not to be bound themſelves. And the ſafeſt way of proceeding againſt a *peer*, is by complaint to the court of chancery or king's bench. 1 *Haw.* 127.

IV. In what manner it ſhall be granted.

1. It ſeemeth certain, that if the perſon to be bound be in the preſence of the juſtice, he may be immediately committed, unleſs he offers ſureties; and from hence it follows *a fortiori*, that he may be commanded by word of mouth to find ſureties, and committed for his diſobedience: But it is ſaid, that if he be abſent, he cannot be committed without a warrant from ſome juſtice in order to find ſureties, and that ſuch warrant ought to be under ſeal, and to ſhew the cauſe for which it is granted, and at whoſe ſuit (that the party may provide his ſureties), and that it may be directed to any indifferent perſon. 1 *Haw.* 128.

2. The juſtice may make the warrant, to bring the party before himſelf or ſome other juſtice, or he may make it to bring the party before himſelf only; for he that maketh the warrant for the moſt part hath the beſt knowledge of the matter, and therefore he is the fitteſt to do juſtice in the caſe. 5 *Co.* 59.

3. As to the granted proceſs of the peace or good behaviour, out of the chancery or king's bench, it is enacted by the 21 *J. c.* 8. that it ſhall not be granted but upon motion in open court, and declaration in writing and upon oath, to be exhibited by the party deſiring ſuch proceſs, of the cauſes for which ſuch proceſs ſhall be granted; the motion and declaration to be mentioned on the back of the writ. And if it ſhall afterwards appear, that the cauſes are untrue, the court may order coſts to the party grieved, and commit the offender till paid.

V. How the peace warrant may be ſuperſeded.

1. It is ſaid, that if one who fears that the ſurety of the peace will be demanded againſt him, find ſureties before any juſtice of the ſame county, either before or after a warrant is iſſued againſt him, he may have a *ſuperſedeas*

from ſuch juſtice, which ſhall diſcharge him from arreſt from any other juſtice, at the ſuit of the ſame party, for whoſe ſecurity he has given ſuch ſurety. 1 *Haw.* 129.

2. In which *ſuperſedeas* it is not neceſſary to name either the ſureties, or the ſums in which they are bound; but yet it is the better form to expreſs them both. *Dalt. c.* 118.

3. Alſo, it is ſaid, that an appearance upon a recognizance for the peace may be ſuperſeded, by finding ſureties in the chancery or king's bench, and purchaſing a writ teſtifying the ſame; but this practice having been often abuſed, it is enacted by the 21 *J. c.* 8. that no writs of *ſuperſedeas* ſhall be granted out of the chancery or king's bench, but upon motion in open court, and on ſuch ſufficient ſureties as ſhall appear on oath to the court, to be aſſeſſed in the ſubſidy book at 5 *l.* lands, or 10 *l.* goods, and unleſs it ſhall alſo firſt appear to the court, that the proceſs of the peace or good behaviour is proſecuted againſt him, deſiring ſuch *ſuperſedeas bona fide* by ſome party grieved in that court, out of which the *ſuperſedeas* is deſired to be awarded. 1 *Haw.* 129.

VI. How the peace warrant ſhall be executed.

1. It can be executed only by the perſons to whom it is directed, or ſome of them, unleſs it be directed to the ſheriff, who may either by parol, or by precept in writing, authorize an officer ſworn and known, to ſerve it, but cannot impower any other perſon without a precept in writing. 1 *Haw.* 128.

2. It ſeems generally agreed, that where a perſon authorized by warrant of a juſtice of the peace, to compel a man who is ſheltered in an houſe, to find ſureties for the peace or good behaviour, is denied quietly to enter into it, he may juſtify breaking open the doors, in order to take him; but he muſt firſt ſignify to thoſe in the houſe the cauſe of his coming, and requeſt them to give him admittance. 2 *Haw.* 86.

3. If the warrant ſpecially direct that the party ſhall be brought before the juſtice who made it, the officer ought not to carry him before any other; but if the warrant be general, to bring him before any juſtice of ſuch place, the officer has the election to bring him before what juſtice

he

he pleaſeth, and may carry him to priſon for refuſing to find ſurety before ſuch juſtice. 1 *Haw.* 128.

4. And if the party is carried before another juſtice, and not before him who iſſued the warrant, ſuch other juſtice muſt take the ſurety, and bind him by recognizance in all points as the form of the precept doth require. And thereupon ſuch other juſtice, having ſo taken ſurety of the peace, may and ought upon requeſt, to make his *ſuperſedeas* to all officers, and to all other juſtices of the ſame county; and thereby the ſaid party ſhall be diſcharged from finding other ſurety, and from any other arreſt for the ſame cauſe. But by ſuch *ſuperſedeas*, the other juſtice cannot diſcharge the warrant of the firſt juſtice, until the party be bound indeed, nor give any other day to the party to appear. *Dalt. c.* 118.

5. If the warrant be in the common form, requiring the officer to cauſe the party complained of to come before the juſtice to find ſufficient ſurety, and if he ſhall refuſe ſo to do, to convey him immediately to priſon, without expecting any further warrant, until he ſhall willingly do the ſame, the officer who ſerves it, before he makes any arreſt, ought firſt to require the party to go with him, and find ſureties according to the purport of the warrant; but upon refuſal to do either, that is, either to go before the juſtice, or to find ſureties, he may carry him to the gaol by force of the ſame warrant, without more. 1 *Haw.* 128. *Dalt. c.* 118.

And yet the conſtable, or officer, may bring him in that caſe before the juſtice; and if he refuſes there to give ſureties, he may commit him without any further warrant or *mittimus*. 2 *H. H.* 112.

Nevertheleſs, notwithſtanding theſe great authorities, it may not be convenient for the juſtice, to leave ſo much to the conſtable's judgment, as to determine what ſhall or ſhall not be deemed a refuſal to find ſuch ſureties; for that the conſtable is conſtituted a judge in ſuch caſe by no law. And much leſs doth it ſeem adviſeable, to require in the warrant, as is uſual, that the conſtable ſhall carry the party to gaol, if he ſhall refuſe to find *ſufficient* ſureties; for it doth not appear how the conſtable can any way be deemed a competent judge of that; for it is certain, that he cannot adminiſter an oath to ſuch ſureties, or others, whereby to inform himſelf of ſuch ſufficiency.

6. If the officer do arreſt the party, and do not carry him before the juſtice to find ſureties; or upon the refuſal of the party, if the officer ſhall arreſt him, and do not

carry him to the gaol, in both these cases the officer is punishable by the justices for this neglect, by indictment and fine at their sessions: And also the party arrested may have his action of false imprisonment for the arrest; for where the officer doth not pursue the effect of his warrant, his warrant will not excuse him of that which he hath done. *Dalt. c.* 118.

7. When the party cometh before the justice, he must offer sureties, or else the justice may commit him; for the justice needeth not to demand surety of him. *Dalt. c.* 118, 169.

8. If the justice was deceived in the sufficiency of the sureties, he or any other justice may afterwards compel the party to find and put in other sufficient sureties, and may take a new recognizance for the same. *Dalt. c.* 116, 119.

9. But if the sureties die, the party principal shall not be compelled to find new sureties. *Dalt. c.* 119. Because their executors or administrators are liable.

10. Also if a man that was bound to keep the peace, hath broken his bond, the justices ought of discretion to bind him anew. *Lamb.* 78.

But not until he be thereof convicted by due course of law; for before conviction, he standeth indifferent, whether he hath forfeited his recognizance or not. *Crom.* 125.

VII. What ought to be the form of a recognizance for the peace.

1. The recognizance, which the justice takes for the keeping of the peace, is rather of congruity, than by any express authority given either by the common law, or by statute. *Dalt. c.* 168.

2. If it is taken in pursuance of a writ of *supplicavit*, it must be wholly governed by the directions of such writ: But if it be taken before a justice, upon a complaint below, it seems that it may be regulated by the discretion of such justice, both as to the number and sufficiency of the sureties, and the largeness of the sum, and the continuance of the time for which the party shall be bound. And it hath been said, that a recognizance to keep the peace as to any person, for a year, or for life, or without expressing any certain time (in which case it shall be intended for life) or without fixing any time or place for the party's

party's appearance, or without binding him to keep the peace againſt all the king's people in general, is good. 1 *Haw.* 129.

3. However it ſeems to be the ſafeſt way, to bind the party to appear at the next ſeſſions of the peace, and in the mean time to keep the peace as to the king and all his liege people, eſpecially as to the party, according to the common form of precedents. 1 *Haw.* 129.

VIII. How ſuch recognizance ſhall be certified.

If it be taken by force of a writ of *ſupplicavit*, it needs not be certified till the juſtice receive a writ of certiorari to that purpoſe. But if it be taken upon a complaint below, it muſt be certified, ſent, or brought to the next ſeſſions, by force of the ſtatute of the 3 *H.* 7. *c.* 1. that the party ſo bound may be called. 1 *Haw.* 130.

IX. How ſuch recognizance may be forfeited.

1. There are divers things which may be done againſt the peace, and divers offences for which an indictment againſt the peace will lie; and yet the committing or doing ſuch offence or act ſhall be no forfeiture of the recognizance for the peace: for that the act that ſhall cauſe a forfeiture of ſuch recognizance muſt be done or intended unto the *perſon* as is aforeſaid, or in terror of the people. Therefore to enter into lands, where he ought to bring his action; or to diſſeiſe another of his lands; or to enter into lands or tenements with force, being without offer of violence to any man's perſon, and without publick terror; or to do a treſpaſs in another man's corn or graſs; or to take away another man's goods wrongfully, ſo it be not from his perſon; or to ſteal another man's horſe, or other goods felonioufly, being not from his perſon: All theſe, and the like, are breaches of the peace, and yet theſe will make no breach of this recognizance, nor breach of the peace within the meaning of the commiſſion of the peace. *Dalt.* *c.* 121.

2. More particularly; The recognizance is forfeited, if the party make default of appearance, and the ſame default ſhall be recorded. 3 *H.* 7. *c.* 1.

However, if the party have any excuſe for his not appearing, it ſeems that the ſeſſions is not bound peremptorily

rily to record his default, but may equitably conſider the reaſonableneſs of ſuch excuſe. 1 *Haw.* 130.

And Mr. *Dalton* ſays, in caſe of the ſickneſs of the party, ſo that he cannot appear, he has known that the juſtices, upon due proof thereof have forborn to certify or record ſuch forfeiture or default: and that they have taken ſureties for the peace of ſome friends of his preſent in court, until the next ſeſſions; for that the principal intent of the recognizance was but the preſervation of the peace. But he queries how this is warrantable by their oath. *Dalt. c.* 120.

3. Alſo, there is no doubt, but that it may be forfeited by any actual violence to the perſon of another, whether it be done by the party himſelf, or by others through his procurement; as manſlaughter, rape, robbery, unlawful impriſonment and the like. 1 *Haw.* 130.

4. Alſo it hath been holden, that it may be forfeited by any treaſon againſt the king's perſon, and alſo by any unlawful aſſembly in terror of the people, and even by words directly tending to a breach of the peace, as by challenging one to fight, or in his preſence threatening to beat him. 1 *Haw.* 130.

Otherwiſe it is if the party be abſent; and yet if the party ſo bound ſhall threaten to kill or beat a perſon who is abſent, and after ſhall lie in wait for him to kill or beat him, this is a forfeiture of the recognizance. *Dalt. c.* 121.

5. However, it ſeems that it ſhall not be forfeited by bare words of heat and choler, as the calling a man a knave, teller of lies, raſcal, or drunkard; for though ſuch words may provoke a cholerick man to break the peace, yet they do not directly challenge him to it, nor does it appear that the ſpeaker deſigned to carry his reſentment any farther: And it hath been ſaid, that even a recognizance for the good behaviour ſhall not be forfeited for ſuch words; from whence it follows *a fortiori*, that a recognizance for the peace ſhall not. 1 *Haw.* 130.

6. Alſo, there are ſome actual aſſaults on the perſon of another, which do not amount to a forfeiture of ſuch recognizance; as if an officer, having a warrant againſt one who will not ſuffer himſelf to be arreſted, beat or wound him in the attempt to take him; or if a parent in a reaſonable manner chaſtiſe his child; or a maſter his ſervant, being actually in his ſervice at the time; or a ſchoolmaſter his ſcholar; or a gaoler his priſoner; or even a huſband his wife, as ſome ſay; or if one confine a friend who is mad,

mad, and bind and beat him, in ſuch manner as is proper in his circumſtances; or if a man force a ſword from one who offers to kill another therewith; or if a man gently lay his hands upon another, and thereby ſtay him from inciting a dog againſt a third perſon; or if a man beat another (without wounding him, or throwing at him a dangerous weapon) who wrongfully endeavours with violence to diſpoſſeſs him of his land or goods, or the goods of another delivered to him to be kept, and will not deſiſt upon his laying his hands gently on him, and diſturbing him; or if a man beat, or as ſome ſay, wound, or maim one who makes an aſſault upon his perſon, or that of his wife, parent, child, or maſter, eſpecially if it appear that he did all he could to avoid fighting before he gave the wound; or if a man fight with or beat one who attempts to kill any ſtranger; or if a man even threaten to kill one, who puts him in fear of death, in ſuch a place where he cannot ſafely fly from him; or if one impriſon thoſe whom he ſees fighting, till the heat is over. 1 *Haw.* 130, 131.

X. How the recognizance being forfeited ſhall be proceeded on.

It is ſaid, that the juſtices cannot in any caſe proceed againſt the party, for a forfeiture of his recognizance, either in reſpect of his not appearing, or breaking the peace; but that the recognizance itſelf, with the record of default of appearance, ought to be removed into ſome of the courts at *Weſtminſter*, who ſhall proceed by *ſcire facias* upon ſuch recognizance: And ſo it ought to be, if it be preſented by the jury, or great inqueſt, that the party hath forfeited his recognizance, by breach of the peace. 1 *Haw.* 130. *Dalt. Old Ed. c.* 70.

XI. How ſuch recognizance may be diſcharged.

1. He who is bound to the peace, and to appear at a certain day, muſt appear at that day, and record his appearance, although he who craved the peace cometh not to deſire that it may be continued; otherwiſe the recognizance cannot be diſcharged. *Dalt. c.* 120.

2. If the recognizance be made to keep the peace generally, without any time or day limited, it ſhall be conſtrued

ſtrued to be during the party's life; and this the juſtice may do upon reaſonable cauſe: but if ſuch ſurety be ſo taken, during the offender's life, neither the king, nor the juſtice, nor the party, can releaſe or diſcharge it: And therefore the juſtice muſt be well adviſed, how he granteth ſuch ſurety. *Dalt. c.* 119, 120.

3. But it ſeems to be agreed, that it may be diſcharged by the death or demiſe of the king in whoſe reign it was taken, or of the principal party who was bound thereby, if it were not forfeited before. 1 *Haw.* 129.

4. Alſo it hath been holden, that it may be diſcharged by the releaſe of the party at whoſe complaint it was taken, being certified together with it; but this may juſtly be queſtioned, becauſe the recognizance is not to the ſubject but to the king; and conſequently cannot be diſcharged by the ſubject, who is not a party to it: however, ſuch a releaſe will be a good inducement to the court, to which ſuch a recognizance ſhall be certified, to diſcharge it. 1 *Haw.* 129.

5. And if a man be bound to keep the peace towards the king and all his people, but not towards any perſon certain, and to appear at ſuch a ſeſſions, the court at that ſeſſions may make proclamation, that if any man can ſhew cauſe, why the peace granted againſt ſuch a one ſhall be continued, he ſhall ſpeak; and if no perſon cometh to demand the peace againſt him, or to ſhew cauſe why it ſhould be continued, then the court may diſcharge him. But if a man be bound as aforeſaid, and *eſpecially to keep the peace towards a certain perſon*, there though ſuch perſon cometh not to deſire the peace may be continued, yet the court by their diſcretion may bind him over till the next ſeſſions, and that may be to keep the peace againſt that perſon only if they ſhall think good; for it may be that the perſon who firſt craved the peace is ſick, or otherwiſe letted, ſo as he cannot come to that ſeſſions to demand the continuance of the peace further. *Dalt. c.* 120.

6. Alſo it is certain, that ſuch a recognizance cannot be pardoned or releaſed by the king, before it is broken; becauſe the ſubject hath a kind of intereſt in it; but being forfeited, then the king, and no other may releaſe and pardon the forfeiture. 1 *Haw.* 129.

And it is ſaid, that the ſureties are not diſcharged by their death; but that their executors or adminiſtrators (as hath been ſaid) do continue bound. 1 *Haw.* 129. *Dalt. c.* 120.

8. Likewiſe

8. Likewiſe, if the party be impriſoned for default of ſureties, and after, he that demandeth the peace againſt him happen to die; it ſeemeth the juſtice may make his liberate or warrant for the delivery of ſuch priſoner, for after ſuch death, there ſeemeth no cauſe to continue the other in priſon. Alſo, any juſtice may, upon the offer of ſuch priſoner take ſurety of him for the peace, and may thereupon deliver him. *Dalt. c.* 118.

Surety for the good behaviour.

A MAN may be compelled to find ſureties, both for the good behaviour and for the peace; and yet the good behaviour includeth the peace: and he that is bound to the good behaviour, is therein alſo bound to the peace. *Dalt. c.* 122.

This ſurety for the good behaviour being of near affinity to ſurety for the peace, both as to the manner in which it is to be taken, ſuperſeded, and diſcharged, it ſeemeth not to require a particular conſideration, ſave only as to theſe two points:

I. For what miſbehaviour it is to be required.
II. For what it ſhall be forfeited.

I. For what miſbehaviour it is to be required.

1. It doth not appear that the conſervators of the peace at common law had any power as touching the *good behaviour*, further than as it had a relation to the *peace*; and not as it is contra-diſtinguiſhed from it. And it ſeemeth, that the power which the juſtices of the peace do exerciſe at this day, in relation thereto, doth ſolely depend upon the commiſſion of the peace, and the ſtatute of the 34 *Ed.* 3. *c.* 1. (Except in ſome ſpecial inſtances wherein the power of binding to the good behaviour is given to them by particular ſtatutes, which pertain not to this general title.)

2. The words in the commiſſion are theſe: *We have aſſigned you, jointly and ſeverally, and every one of you, our juſtices to keep our peace—and to cauſe to come before you, or any of you, all thoſe who to any one or more of our people, concerning*

cerning their bodies, or the firing their houſes, have uſed threats, to find ſufficient ſecurity for the peace, or their good behaviour, towards us and our people; and if they ſhall refuſe to find ſuch ſecurity, then them in our priſons, until they ſhall find ſuch ſecurity, to cauſe to be ſafely kept.

3. The ſtatute of the 34 *Ed.* 3. *c.* 1. as to this matter runs thus: *In every county ſhall be aſſigned for the keeping of the peace, one lord, and with him three or four of the moſt worthy in the county, with ſome learned in the law; and they ſhall have power to reſtrain the offenders, rioters, and all other barators, and to purſue, arreſt, take, and chaſtiſe them according to their treſpaſs or offence; and to cauſe them to be impriſoned and duly puniſhed, according to the law and cuſtoms of the realm, and according to that which to them ſhall ſeem beſt to do by their diſcretions and good adviſement; and alſo to inform them, and to inquire of all thoſe that have been pillors and robbers in the parts beyond the ſea, and be now come again, and go wandering, and will not labour as they were wont in times paſt; and to take and arreſt all thoſe that they may find by indictment, or by ſuſpicion, and to put them in priſon; and to take of all them that be not of good fame, where they ſhall be found, ſufficient ſurety and mainprize of their good behaviour towards the king and his people, and the other duly to puniſh, to the intent the people be not by ſuch rioters or rebels troubled nor endamaged, nor the peace blemiſhed, nor merchants nor others paſſing by the highways of the realm diſturbed, nor put in the peril which may happen of ſuch offenders.*

4. This ſtatute ſeems to have had in view chiefly the diſorders to which the country was then liable, from great numbers of diſbanded ſoldiers, who having ſerved abroad in the wars of that victorious king, were grown ſtrangers to induſtry, and were rather inclined to live upon rapine and ſpoil. *Barl.* 524.

5. But whatever the natural and obvious ſenſe of it may be, when compared with the hiſtory and circumſtances of thoſe times, it is certain that it hath been carried much farther by conſtruction, and the purport of it hath been extended by degrees, until at length there is ſcarcely any other ſtatute, which hath received ſuch a largeneſs of interpretation.

And that I may proceed with clearneſs in a matter ſo eſſential to the office of a juſtice of the peace, I will ſet down the ſeveral expoſitions which have been given of this ſtatute from time to time, by learned men; and then raiſe ſuch obſervations thereupon, as the ſubject will naturally ſuggeſt.

6. The

6. The firſt unfolding of the ſenſe of this ſtatute which has occurred, was in the caſe of Sir *Richard Croftes* and Sir *Richard Corbet*, in the ſecond year of the reign of king *Hen.* 7. wherein it was reſolved by all the judges for that purpoſe aſſembled, that he who is bound to the good behaviour, ought not to do any thing which ſhall be cauſe of breach of the peace, or to put the people in fear, dread, or trouble; and ſo ſhall be intended of all things which concern the peace: But not in miſdoing of other things, which touch not the peace. Yet a diverſity was obſerved, between a breach of the peace, and a breach of the good behaviour; for the peace is not broken without any affray or battery, but the good behaviour may be forfeited by the number of people a man has, and by their harneſs, or weapons, and the like, although they break not the peace. 2 *H.* 7. 2.

7. The ſecond inſtance, and upon which much ſtreſs hath been laid, was in the 13th year of the ſame king. In treſpaſs of aſſault, battery, and impriſonment at *D.* the defendant ſaith, that one *Alice B.* had a houſe in the ſame town, and kept there ſuſpicious people, to wit, of common bawdry, and that the plaintiff oftentimes reſorted to the ſame houſe ſuſpiciouſly, with women of bad fame and name, whereby the conſtable of the ſame town required the defendant to aid him to arreſt the plaintiff, to find ſurety of his good behaviour: whereby the defendant came with the ſaid conſtable at the hour of 12 in the night, and him found ſuſpiciouſly in the ſame place; whereupon he took him, and put him in ward: And it was holden by all the juſtices to be a good juſtification; for they ſaid, that it is lawful for every conſtable to take ſuſpected perſons, which wake in the night, and ſleep in the day, or that keep ſuſpicious company. 13 *H.* 7. 10.

8. In the next place, Sir *Anthony Fitzherbert*, who lived in the reign of K. *Hen.* 8. ſaith, that it ſeemeth that one juſtice may, by the commiſſion, iſſue a warrant againſt a perſon to find ſurety of the good behaviour, by his diſcretion, as well as two juſtices may; and the words of the ſtatute of the 34 *Ed.* 3. are to the ſame effect: Otherwiſe, he ſays, damage may happen to ſome of the king's ſubjects, if the party be not attached, before that two juſtices have made the precept; yet (he ſays) the common uſage is, to make ſuch precept of the good behaviour in the name of two juſtices, and it is good to obſerve this direction. *Fitzh.* 7. *Crom.* 122.

9. In the next place, it is proper to take notice of a caſe adjudged

adjudged to the court of king's bench, in the 30th of Q. *Eliz.* reported by L. *Coke*, 4 *Inſt.* 181. which was thus: At a ſeſſions at *Bridgewater*, in the county of *Somerſet*, one *William King* with ſureties was bound by recognizance to appear at the next general ſeſſions of the peace in the ſame county, and in the mean time to be of the good behaviour towards the queen and all her people. And after, at the next ſeſſions, *William King* appeared, and was indicted for ſlanderous words ſpoken ſince his binding, to wit, for ſaying at one time to *Edward Kyrton*, eſquire, *Thou art a pelter, thou art a lyar, and haſt told my lord lies.* And he was further indicted, that ſince the ſaid recognizance, *the cloſe of one* John Wich *with force and arms he broke and entred, and the cattle of the ſaid* John *depaſturing in the ſaid cloſe unlawfully vexed and chaſed.* And afterwards at another time he ſaid to the ſaid *Kyrton, thou art a drunken knave.* Which indictment was removed into the king's bench. And hereupon it was debated divers times both at the bar and the bench, whether admitting all that is contained in the indictment to be true, any thing therein was in judgment of law a breach of the ſaid recognizance. And it was reſolved, that neither any of the words, nor the treſpaſs, were any breach of the good behaviour, for that none of them did tend immediately to the breach of the peace; for though the ſaid words, *thou art a liar, thou art a drunken knave*, are provocations, yet they tend not immediately to the breach of the peace; as if *William King* had challenged *Kyrton* to fight with him, or had threatened to beat or wound him, or the like; theſe tend immediately to the breach of the peace, and are therefore breaches of the recognizance of the good behaviour. And this diverſity (lord *Coke* ſays) was juſtly collected upon the coherence and context of the ſtatute of the 34 *Ed.* 3. whereby juſtices are aſſigned for keeping of the peace, and to reſtrain the offenders, rioters, and all other barators, and to chaſtiſe them according to their treſpaſs and offence; and to inquire of pillors and robbers in the parts beyond the ſeas, and be now come again, and go wandring and will not labour: And thus much for the puniſhment of offences againſt the peace after they be done. Then followeth an expreſs authority given to juſtices, for prevention of ſuch offences before they be done, namely, *and to take of all them that be not of good fame* (that is, that be defamed and juſtly ſuſpected that they intend to break the peace) *where they ſhall be found, ſufficient ſurety and mainprize of their good behaviour towards the king and his people* (which muſt concern the king's peace, and is alſo provided by the

words

words ſubſequent) *to the intent that the people be not by ſuch rioters troubled or endamaged, nor the peace blemiſhed, nor merchants nor others paſſing by the highways diſturbed, nor put in the peril that may happen of ſuch offenders.* And as for the treſpaſs; although every wrongful treſpaſs is by force and arms, and againſt the peace, yet theſe are not taken to be ſuch as ſhall make a breach of the good behaviour.

10. After this, Mr. *Lambard*, who wrote towards the beginning of the reign of K. *James* ſaith thus: Surety of the good abearing is of great affinity with that of the peace: as being provided for preſervation of the peace, as that other is; for in the commiſſion of the peace, they are both conveyed under one tract of ſpeech, againſt ſuch as threaten to hurt mens bodies, or fire their houſes: which things (he ſays) are now commonly prevented by ſurety of the peace only.

And in the 2 *H.* 7. *c.* 2. (above recited) the ſurety of the good abearing is ſet forth to reſt in this point chiefly, that a man do nothing that may be cauſe of a breach of the peace; and that it doth not conſiſt in the obſervation of things that concern not the peace; and that it ſhould differ from ſurety of the peace in this, that where the peace is not broken without an affray, or battery, or ſuch like, this ſurety may be broken by the number of a man's company, or by his or their weapons or harneſs.

And herewithal (he ſays) do alſo agree certain precedents in the king's bench.

But all this notwithſtanding, he thinks that a man may reaſonable affirm, that the ſurety of good abearing ſhould not be reſtrained to ſo narrow bounds.

In proof of which, he proceeds to comment on the above-mentioned ſtatute of the 34 *Ed.* 3. enabling the keepers of the peace *to take of all them that be not of good fame, where they ſhall be found, ſufficient ſurety and mainprize of their good abearing, towards the king and his people:* So that if a man be defamed, he may by virtue hereof, be bound to his good behaviour at the diſcretion of the juſtices. Now the doubt reſteth in this; to underſtand concerning what matters this defamation muſt be: and this (he thinks) may be partly gathered out of the ſaid ſtatute; for after it hath firſt given power to the wardens of the peace to arreſt and chaſtiſe offenders (that is to ſay, againſt the peace, rioters, and barators) then it willeth them to *inquire of ſuch as having been robbers beyond the ſea, were come over hither, and would not labour as they were wont*; and laſtly, it authorizeth them, *to take ſurety of the good behaviour of ſuch as be defamed*, namely, for any of thoſe for-

mer offences; for ſo it ſtandeth well together that they ſhould both puniſh ſuch as have already ſo offended, and ſhall alſo provide, that others ſhall not likewiſe offend.

But he ſays, the further this bond of the good abearing doth extend, the more regard there ought to be taken in the awarding of it; and therefore (ſays he) although the juſtices have power to grant it, either by their own diſcretion or upon the complaint of others, even as they may that of the peace, yet I wiſh rather that they do not command it but only upon ſufficient cauſe ſeen to themſelves, or upon the complaint of other very honeſt and credible perſons.

And then being about to ſet forth the form of a warrant, and of a recognizance for the good behaviour, he ſays,——And here, foraſmuch as one juſtice alone, and out of ſeſſions, may both by the firſt clauſe of the commiſſion, and alſo by the opinion of *Fitzherbert*, grant this ſurety of the good abearing (although, the common practice be, that two ſuch juſtices do join in that doing, whereof alſo *Fitzherbert* hath very good liking), I will not ſtick to ſet forth the common forms as well of the precept as of the recognizance for the ſame, wherein if I ſhall uſe the names of two juſtices, you muſt take that to be done according to the common faſhion, and not of any neceſſity in law. For as I would more gladly uſe the aſſiſtance of a fellow juſtice in this behalf, if I may conveniently have it; ſo if that may not be gotten, I would not greatly fear, when good cauſe ſhall require, to undertake the thing myſelf alone.

And beſides this, he ſays, you may ſee admitted by the opinion of the court, 13 *H.* 7. that if a man in the night ſeaſon haunt a houſe that is ſuſpected for bawdry, or uſe ſuſpicious company, then may the conſtable arreſt him to find ſurety for his good abearing; for bawdry is not merely a ſpiritual offence, but mixed, and founding ſomewhat againſt the peace of the land.

And therefore (ſays he) it ſhall not be amiſs at this day, in my ſlender opinion, to grant ſurety of the good abearing, againſt him that is ſuſpected to have begotten a baſtard child, to the end that he may be forthcoming when it ſhall be born; for otherwiſe there will be no putative father found, when the juſtices ſhall after the birth come to take order for his puniſhment. *Lamb.* 115—119.

11. In the next place, Mr. *Pulton*, who lived about the ſame time with Mr. *Lambard*, writeth thus; The ſurety of the good abearing is ordained for the preſervation of the peace,

peace, and it doth differ in nothing from that of the peace, but that there is more difficulty in the performance of it, and the party bound may ſooner ſlide into the peril and danger of it. The ſurety of good abearing is moſt commonly granted in open ſeſſions, or by two or three juſtices; or, upon a *ſupplicavit*, and great cauſe ſhewed and proved, it is granted in the chancery or king's bench. And though one juſtice alone may grant it if he will, yet it is ſeldom done ſo, unleſs it be to prevent ſome great, ſudden, and imminent enormity or danger. The ſurety of the peace is moſt times taken at the requeſt of one for the preſervation of the peace chiefly againſt one. But the ſurety for the good abearing is oftentimes granted at the ſuit of divers, and thoſe muſt be men of credit, and to provide for the ſafety of many; for the effect and purport thereof is, that the party bound ſhall demean himſelf well in his port, behaviour, and company, and do nothing that may be the cauſe of breach of the peace, or in putting the people in fear or trouble: And it is chiefly granted againſt common barators, common rioters, common quarellers, common peace breakers, and perſons greatly defamed for reſorting to houſes ſuſpected to maintain incontinency or adultery, and againſt thoſe that be generally feared to be robbers or ſpoilers of the king's people, or which do endamage, diſturb, trouble, or put in peril paſſengers by the way. *Pult.* 18.

12. Afterwards Mr. *Dalton*, who wrote towards the latter end of king *James* the firſt his reign, ſays, The ſurety of the good behaviour is of great affinity with that of the peace, and is provided chiefly for the preſervation of the peace; and that it is moſt commonly granted either in the open ſeſſions, or by two or three juſtices out of ſeſſions. Yet by the words of the commiſſion, as alſo by the common opinion of the learned, one juſtice alone, out of ſeſſions, may grant this ſurety of the good behaviour. But this is not uſual, unleſs it be to prevent ſome great and ſudden danger, eſpecially againſt a man that is of any good eſtate, carriage, or report. And it ſhall be good diſcretion in the juſtices, that they do not grant it, but either upon ſufficient cauſe ſeen to themſelves, or upon the ſuit or complaint of others, and the ſame very honeſt and credible perſons. *Dalt. c.* 123.

13. In the next place, Mr. *Hawkins*, who wrote in the reign of king *George* the firſt, ſaith thus: There ſeem to have been ſome opinions, that the ſtatute, ſpeaking of thoſe that be *not of good fame*, means only ſuch as are de-

famed, and juſtly ſuſpected, that they intend to break the peace, and that it doth not any way extend to thoſe who are guilty of other misbehaviours not relating to the peace. But this ſeems much too narrow a conſtruction; ſince the abovementioned expreſſion of perſons of *evil fame*, in common underſtanding, as properly includes perſons of ſcandalous behaviour in other reſpects, as thoſe who by their quarrelſome behaviour give juſt ſuſpicion of their readineſs to break the peace; and accordingly it ſeems always to have been the better opinion, that a man may be bound to his good behaviour for many cauſes of ſcandal, which give him a bad fame, as being contrary to good manners only; as for haunting bawdy houſes with women of bad fame; or for keeping bad women in his own houſe; or for ſpeaking words of contempt of an inferior magiſtrate, as a juſtice of the peace, or mayor, though he be not then in the actual execution of his office; or of an inferior officer of juſtice, as a conſtable, and ſuch like, being in the actual execution of his office.

However it ſeems the better opinion, that no one ought to be bound to the good behaviour, for any raſh, quarrelſome, or unmannerly words, unleſs they either directly tend to a breach of the peace, or to ſcandaliſe the government, by abuſing thoſe who are intruſted by it with the adminiſtration of juſtice, or to deter an officer from doing his duty: and therefore it ſeems, that he who barely calls another rogue, or raſcal, or teller of lies, or drunkard, ought not for ſuch cauſe to be bound to the good behaviour.

However, ſays he, I cannot find any certain preciſe rules, for the direction of the magiſtrate in this reſpect; and therefore am inclined to think, that he has a diſcretionary power to take ſuch ſurety of all thoſe whom he ſhall have juſt cauſe to ſuſpect to be dangerous, quarrelſome or ſcandalous; as of thoſe who ſleep in the day, and go abroad in the night; and of ſuch as keep ſuſpicious company; and of ſuch as are generally ſuſpected to be robbers, and the like; and of eves droppers; and common drunkards; and all other perſons, whoſe misbehaviour may reaſonably be intended to bring them within the meaning of the ſtatute, as perſons of evil fame, who, being deſcribed by an expreſſion of ſo great latitude, ſeem in a great meaſure to be left to the judgment of the magiſtrate. But if he commit one for want of ſureties, he muſt ſhew the cauſe with convenient certainty. 1 *Haw.* 132.

14. And

14. And thus the ſenſe of the ſtatute hath been extended, not only to offences immediately relating to the peace, but to divers miſbehaviours not directly tending to a breach of the peace; inſomuch as it is become difficult to define how far it ſhall extend, and where it ſhall ſtop.

Mr. *Dalton*, in order to determine the ſame with ſome kind of certainty, hath (notwithſtanding his opinion as abovementioned) inſerted a number of inſtances, wherein ſureties of the good behaviour may be granted; and they are theſe that follow:

(1) Againſt rioters.

(2) Barators.

(3) Common quarellers, and common breakers of the peace.

(4) Such as lie in wait to rob, or ſhall be ſuſpected to lie in wait to rob, or ſhall aſſault, or attempt to rob another, or ſhall put paſſengers in fear or peril; or ſhall be generally ſuſpected to be robbers by the highway.

(5) Such as are like to commit murder, homicide, or other grievances, to any of the king's ſubjects in their bodies.

(6) Such as ſhall practiſe to poiſon another: one inſtance of which may be the poiſoning their food: thus Mr. *Dalton* granted the good behaviour againſt one who had bought ratſbane, and mingled it with corn, and then caſt it amongſt his neighbour's fowls, whereby moſt of them died.

(7) Such as in the preſence or hearing of the juſtice, ſhall miſbehave himſelf in ſome outrageous manner of force or fraud.

(8) Such as are greatly defamed for reſorting to houſes ſuſpected to maintain adultery, or incontinency.

(9) Maintainers of houſes commonly ſuſpected to be houſes of common bawdry.

(10) Common whoremongers and common whores, for bawdry is an offence temporal as well as ſpiritual, and is againſt the peace of the land.

(11) Night walkers, that ſhall eves-drop mens houſes, or ſhall caſt mens gates, carts, or the like, into ponds, or commit other outrages or miſdemeanors in the night, or ſhall be ſuſpected to be pilferers, or otherwiſe like to diſturb the peace, or that be perſons of ill behaviour, or of evil fame or report generally, or that ſhall keep company with any ſuch, or with any other ſuſpicious perſon in the night.

(12) Suſpected perſons who live idly, and yet fare well, or are well apparelled, having nothing whereon to live; unleſs upon examination they ſhall give a good account of ſuch their living.

(13) Common gameſters, eſpecially if they have not whereon to live.

(14) Such as raiſe hue and cry without cauſe.

(15) Libellers.

(16) Putative father of a baſtard child.

(17) Such as perſuade or procure the putative father to run away, or the mother to be conveyed away, whereby ſhe leaveth her child to the charge of the town.

(18) Such as abuſe a juſtice's warrant, or ſhall abuſe him or the conſtable in executing their office. Nay, it ſeemeth (he ſays) that he who ſhall uſe words of contempt, or contrary to good manners, againſt a juſtice of the peace, tho' it be not at ſuch a time as he is executing his office, yet he ſhall be bound to his good behaviour.

(19) Such as charge another before a juſtice with felony, riot, or forcible entry, and yet will not proſecute or give evidence.

(20) In general, whatſoever act or thing is of itſelf a miſbehaviour, is cauſe ſufficient to bind ſuch an offender to the good behaviour. *Dalt. c.* 124.

To which others have added other inſtances: As,

(21) Forcible entry. 1 *Haw.* 124.

(22) Mr. *Hawkins* ſays, that he hath heard it agreed in the court of king's bench, that a writing full of obſcene ribaldry, without any kind of reflection upon any one, is not puniſhable at all by any proſecution at common law; yet it ſeems, he ſays, that the author may be bound to his good behaviour, as a ſcandalous perſon of evil fame. 1 *Haw.* 195.

(23) A man did beat a woman in *Weſtminſter-hall*, and he was bound to the good behaviour; and ſo (ſays Mr. *Crompton*) he may be bound to the peace or good behaviour, where he ſtriketh a perſon in the preſence of the juſtices in ſeſſions. *Crom.* 124.

(24) A man was bound to the good behaviour by the court of king's bench, for aſſaulting and threatening a perſon ſo, that he could not attend the court in ſuit there, without great coſt. And ſo it ſeemeth that it may be done, where one cometh to the ſeſſions about a traverſe to be tried there, or to prefer a bill of indictment, if he be aſſaulted or threatened. *Crom.* 125.

15. I have

15 I have omitted to make any remarks in the progreſs of theſe authorities, being willing to exhibit them together in one view; I proceed now to take notice of ſuch obſervation as do occur upon the whole.

Firſt, it appears from hence, that the univerſal practice of one juſtice binding to the good behaviour, is but of a modern date; altho' the law for it is the ſame now, that it was near 400 years ago: and that it was a long time doubted, whether one juſtice alone could require ſureties of the good behaviour. But here a diſtinction ought to be made, between the power given by the commiſſion of the peace, and the power given by the above mentioned ſtatute: As to the commiſſion, there ſeemeth to be no foundation for any doubt, but that thereby one juſtice alone may require ſuch ſureties: for the words are expreſs *we have aſſigned you, jointly and ſeverally, and every one of you*; but then that extends only to two inſtances, namely, to *the threatning of a perſon concerning his body, or the firing of his houſe.* As to the ſtatute, the doubt ſeems to have ariſen upon this; in that having appointed who ſhall be aſſigned for juſtices, it then directeth, that *They ſhall have power to reſtrain offenders*; and it is holden, Mr. *Lambard* hath obſerved, that if no power be expreſly given by any ſtatute to any one juſtice alone, he cannot otherwiſe compel the obſervation thereof, than by the help of his fellow juſtices. And Mr. *Hawkins* ſpeaking hereof in the caſe of riots, ſays, that if one juſtice alone, proceeding upon this ſtatute, ſhall arreſt *an innocent perſon* as a rioter, it ſeemeth that he is liable to an action of treſpaſs, and that the party arreſted may juſtify the reſcuing of himſelf; becauſe no one ſingle juſtice is by this ſtatute made a judge of the ſaid offence: Yet, nevertheleſs, he ſays, by a favourable conſtruction which this ſtatute hath received for the advancement of juſtice, it hath been reſolved, that any one juſtice, upon this ſtatute, *if he finds the perſons riotouſly aſſembled*, may, without ſtaying for his companions, arreſt the offenders, and bind them to their good behaviour.

Secondly, it ſeemeth from what hath been rehearſed, that the words, *not of good fame*, were generally underſtood for a long time, to refer to ſuch offences only as have a relation to the peace, and not to other things which concern not the peace.

Thirdly, That one great in-let to the larger, and at length almoſt unlimited interpretation of the words, was the caſe abovementioned 13 *H.* 7. wherein it was adjudged to be lawful to arreſt a man for the good behaviour, for

frequenting

frequenting a ſuſpected bawdy houſe, with women of bad fame. And this is the reaſon which Mr. *Dalton* gives for many of his inſtances above ſpecified, namely, that they are more properly againſt the peace, than this ſame caſe of avowtry.

Fourthly, that when once the gap was opened for the admiſſion of other offences not immediately relating to the peace, they flowed in and multiplied. Thus, in the caſe of baſtardy, having ſome affinity with the other of frequenting bawdy houſes, Mr. *Lambard* thought, that with equal reaſon, the reputed father of a baſtard child might be bound to the good behaviour; and in a few years after, Mr. *Dalton* delivers it abſolutely, that he may be ſo bound.

Fifthly, That therefore the natural and received ſenſe of any ſtatute ought not to be departed from without extreme neceſſity; for that one conceſſion will make way for another, and the latter will plead for the ſame right of admiſſion as the former.

Sixthly, That notwithſtanding the aforeſaid inſtances given by Mr. *Dalton* and others, it may not be ſafe in all caſes to rely upon every one of them without diſtinction; not only becauſe it is almoſt impoſſible for any two caſes to be exactly alike in all their circumſtances, but alſo becauſe in fact divers of them at different times have been adjudged otherwiſe, and others have not prevailed without much difficulty and contradiction in the courts above, and perhaps were at length admitted rather from the conveniency and reaſonableneſs of the thing itſelf, and from an indulgence uſually allowed to thoſe gentlemen who ſerve their country without gain, and oftentimes with much trouble, than from any clear, poſitive, and expreſs power given to them by the commiſſion, or by the ſaid ſtatute.

Seventhly, That notwithſtanding all which hath been ſaid, perhaps the caſe before recited, concerning the frequenting of a ſuſpected bawdy houſe, will not wholly ſupport the weight which ſo many authors have laid upon it. For the queſtion, whether a juſtice of the peace had cognizance of the offence, by virtue of the commiſſion of the peace, or of the ſtatute of the 34 *Ed.* 3. was no part of the diſpute: for it was an arreſt by the conſtable *ex officio*, as a conſervator of the peace at common law, and without any warrant from a magiſtrate: And the queſtion was not, whether the conſtable might require ſureties for the good behaviour, as a thing different from ſureties for the peace, but whether in that caſe he could arreſt at all or not.

And

And if the authority of this caſe ſhall be abated, ſeveral of the abovementioned inſtances will abate in proportion.

Eighthly, It is to be obſerved, that others of the abovesaid inſtances, were eſtabliſhed upon matters originally determined in the court of king's bench, and Mr. *Crompton* himſelf doth refer to the authority and practice of that court in ſeveral inſtances. *Crom.* 120. But it doth by no means follow from what the juſtices of the court of king's bench may do, that juſtices of the peace may do the like; for their authority is circumſcribed and limited by their commiſſion and the ſtatute law.

Ninthly, That it will perhaps abate ſome other of the foregoing inſtances, if we attend to this conſideration; that there is a great difference between what the juſtices in ſeſſions may do, after a conviction by a jury, for an offence committed, and what a ſingle juſtice out of the ſeſſions may do, before an offence is committed, and to prevent the ſame from being committed; or what a ſingle juſtice may do, upon a ſummary conviction before him, for an offence, as directed by ſome ſpecial act of parliament. The truth is, binding to the good behaviour was a diſcretionary judgment at the common law, given by a court of record for an offence at the ſuit of the king, after a common law conviction by verdict of twelve men. Trial by his peers is the *Engliſhman*'s birthright by the great charter, and cannot be taken away but by an authority equal to that which eſtabliſhed it, that is, by act of parliament; and therefore where an act gives a ſummary conviction before a juſtice of the peace, and inflicts a puniſhment upon ſuch conviction, ſuch ſtatute muſt be purſued both as to the conviction and puniſhment. And it ſeemeth incongruous, that a juſtice of the peace ſhall have power to bind a man to the good behaviour, for an offence which he himſelf hath no power to hear and determine; for that is, in effect, giving judgment, and awarding execution, when it doth not, and cannot legally appear to him, that the perſon is guilty.

Tenthly, That therefore upon the whole it may be proper to conclude, that the magiſtrate in this article of the good behaviour, cannot exerciſe too much caution and good adviſement; that in matters which the law hath left indefinite it is better to fall ſhort of, than to exceed his commiſſion and authority; that to bind a man to the good behaviour upon the ſtatute for *evil fame* in general, may not always be with ſafety; not only becauſe upon an action brought it may be hard to prove ſuch evil fame, but alſo becauſe in fact it is not always true, for many a good man hath been

evil ſpoken of: That altho' in ſome caſes, a juſtice of the peace may have a *diſcretionary* power (as Mr. *Hawkins* expreſſeth it) yet he muſt remember withal, that it is a *legal* diſcretion, as Mr. *Barlow* terms it, in which in favour of liberty great tenderneſs is to be uſed; or, as lord *Coke* hath defined it, diſcretion is a knowledge or underſtanding to diſcern between truth and falſhood, between right and wrong, between ſhadows and ſubſtance, between equity and colourable gloſſes and pretences, and not to do according to our wills and private affections; and ſuch diſcretion ought to be limited and bounded with the rules of reaſon, law, and juſtice. 5 *Co.* 100. 10 *Co.* 140.

II. For what it ſhall be forfeited.

1. This hath been handled in part as it fell in with the former ſection: And agreably to the doctrine there laid down, Mr. *Dalton* ſays, that he who is bound to the good behaviour ought to demean himſelf well in his carriage and in his company, not doing any thing which ſhall be a cauſe of breach of the peace, or to put the people in fear, dread, or trouble; and ſo ſhall be intended of all things which concern the peace, but not in miſdoing of other thing which touch not the peace. *Dalt. c.* 122.

2. And Mr. *Hawkins* ſaith, It hath been laid down as a general rule, that whatever will be a good cauſe to bind a man to his good behaviour, will forfeit a recognizance for it; but this hath ſince been denied, and indeed ſeems no means to be maintainable, becauſe the ſtatute in ordering perſons of evil fame to be bound in this manner, ſeems in many places chiefly to regard the prevention of that miſchief which they may juſtly be ſuſpected to be likely to do; and in that reſpect requires them to ſecure the publick from that danger which may probably be apprehended from their future behaviour, whether any actual crime can be proved upon them or not; and it would be extremely hard in ſuch caſes to make perſons forfeit their recognizance, who yet may juſtly be compellable to give one, as thoſe who keep ſuſpicious company, or thoſe who ſpend much money idly, without having any viſible means of getting it honeſtly, or thoſe who lie under a general ſuſpicion of being rogues, and the like. 1 *Haw.* 132, 133.

3. However it ſeems that ſuch a recognizance ſhall not only be forfeited for ſuch actual breaches of the peace, for which a recognizance for the peace may be forfeited; but alſo for ſome others, for which ſuch a recognizance cannot be

be forfeited; as for going armed with great numbers, to the terror of the people, or ſpeaking words tending to ſedition: and alſo for all ſuch actual miſbehaviours which are intended to be prevented by ſuch a recognizance, but not for barely giving cauſe of ſuſpicion of what perhaps may never actually happen. 1 *Haw.* 133.

Warrant for the peace, or good behaviour, in the king's majeſty's name.

Weſtmorland. GEORGE *the third, by the grace of God, of* Great Britain, France, *and* Ireland, *king, defender of the faith, and ſo forth. To our ſheriff of the county of* Weſtmorland, *to the conſtable of the hundred of* ——— *in the ſaid county, to the petty conſtables of the town of* ——— *in the ſaid county, and to all and ſingular our bailiffs and other miniſters in the ſaid county, as well within liberties as without, greeting:*

Foraſmuch as A. I. *of* ——— *in the ſaid county, yeoman, hath perſonally come before Sir* William Dalſton, *knight, one of our juſtices aſſigned to keep the peace within the ſaid county, and hath taken a corporal oath, that he the ſaid* A. I. *is afraid that* A. O. *of* ——— *in the ſaid county, yeoman, will beat* [*wound, maim, or kill*] *him the ſaid* A. I. *and hath therewithal prayed ſurety of the peace againſt him the ſaid* A. O. [Or, if for the good behaviour, —— *hath taken a corporal oath, that* A. O. *of* ——— *in the ſaid county, yeoman, hath threatened to beat him the ſaid* A. I. or *to burn the houſe of him the ſaid* A. I. *and hath therewithal prayed ſurety of the good behaviour againſt him the ſaid* A. O.] *Therefore we command and charge you, jointly and ſeverally, that immediately upon the receipt hereof you bring him the ſaid* A. O. *before the ſaid Sir* William Dalſton, *to find ſufficient ſurety and mainprize, as well for his perſonal appearance at the next general quarter ſeſſions of our peace, to be holden at* Appleby, *or elſewhere, in and for the ſaid county, as alſo for our peace in the mean time to be kept towards us and all our liege people, and chiefly towards the ſaid* A. I. *that is to ſay, that he the ſaid* A. O. *ſhall not do, nor by any means procure or cauſe to be done, any of the ſaid evils, to any of our ſaid people, and eſpecially to the ſaid* A. I. [Or, if for the good behaviour ——— *as alſo for his good behaviour in the mean time, towards us and all our liege people, eſpecially towards him the ſaid* A. I.] *Witneſs the ſaid Sir* William Dalſton *at* Acornbank

bank *in the ſaid county, the* ——— *day of* —— *in the* —— *year of our reign.*

Warrant for the peace, or good behaviour, in the name of the juſtice himſelf.

Weſtmorland. THomas Holme, *eſquire, one of the juſtices of our lord the king aſſigned to keep the peace within the ſaid county, To the ſheriff of the ſaid county, to the high conſtable of* ——— *in the ſaid county, to the petty conſtables of* ——— *in the ſaid county, and to all other the miniſters and officers of our ſaid lord the king, within the ſaid county, and to every of them, greeting:*

Foraſmuch as A. I. *of* ——— *in the ſaid county, yeoman, hath perſonally come before me, and hath taken a corporal oath, that he the ſaid* A. I. *is afraid that* A. O. *of* —— *in the ſaid county, yeoman, will beat him (wound, maim, kill, or do to him ſome bodily hurt) and hath therefore prayed ſurety of the peace againſt him the ſaid* A. O. [Or, if for the good behaviour] *That* A. O. *of* ——— *in the ſaid county, yeoman, hath threatened to do ſome bodily hurt to him the ſaid* A. I. or, *to burn the houſe of him the ſaid* A. I. [*and hath therefore prayed ſurety for the good behaviour againſt him the ſaid* A. O.] *Theſe are therefore on the behalf, and in the name of our ſaid lord the king, to command you jointly and ſeverally, that immediately upon the receipt hereof you bring the ſaid* A. O. *before me, to find ſurety as well for his perſonal appearance at the next general quarter ſeſſions of the peace, to be holden at* Kirkby *in* Kendale *in and for the ſaid county, as alſo for his keeping the peace* [Or, *for his being of the good behaviour*] *in the mean time towards the king and all his liege people, and chiefly towards the ſaid* A. I. *Given under my ſeal at* Kirkby *in* Kendale *in the ſaid county, the* ——— *day of* —— *in the* —— *year of the reign of our ſaid lord* George *the third, of* Great Britain, France, *and* Ireland, *king.*

Or the warrant may be directed to any of theſe officers abovenamed, particularly; or to any other indifferent perſon or perſons, as followeth:

Another warrant for the peace, or good behaviour.

Weſtmorland. { To the conſtables of the town of —— in the ſaid county, and to either of them.

FORASMUCH *as* A. I. *the wife of* B. I. *of your ſaid town, labourer, hath required ſureties of the peace* [or, *of the good behaviour*] *before me* Thomas Strickland, *eſquire, one of the juſtices of our lord the king aſſigned to keep the peace within the ſaid county, againſt* A. O. *of your ſaid town, butcher, and withal hath taken her corporal oath before me, that ſhe requireth the ſame not for any private malice, hatred or evil will, but ſimply that ſhe is afraid, that he the ſaid* A. O. *will do to her ſome bodily miſchief* [or as the caſe ſhall be: And if it be for the good behaviour, then add,— *and that he the ſaid* A. O. *hath threatened to do ſome bodily miſchief to her the ſaid* A. I.] *Theſe are therefore in the name of our ſaid lord the king to charge and command you, that immediately upon ſight hereof, you or one of you do bring the ſaid* A. O. *before me to find ſufficient ſureties, as well for his perſonal appearance at the next general quarter ſeſſions of the peace to be holden in and for the ſaid county, as alſo that he the ſaid* A. O. *ſhall in the mean time time keep the peace,* [or, *be of the good behaviour*] *as well towards our ſaid lord the king, as towards all his liege people, and eſpecially towards the ſaid* A. I. *Dated at* Kirby *in* Kendale *in the ſaid county, the —— day of —— in the ——— year of the reign of our ſaid lord* George *the third, of* Great Britain, France, *and* Ireland, *king, defender of the faith, and ſo forth.*

Another warrant for the peace, or good behaviour.

Weſtmorland. { To the conſtable of ——— in the ſaid county.

FORASMUCH *as* A. I. *of ——— aforeſaid in the county aforeſaid, yeoman, hath perſonally come before me* John Robinſon, *eſquire, one of the juſtices of our lord the king aſſigned to keep the peace within the ſaid county and hath taken his corporal oath, that* A. O. *of ——— aforeſaid, in the county aforeſaid, yeoman, hath aſſaulted, beaten, and wounded*

wounded him the ſaid A. I. *and further hath threatened him concerning his body, inſomuch, that he the ſaid* A. I. *is afraid that the ſaid* A. O. *will beat, wound, maim, or kill him the ſaid* A. I. *or do to him ſome other bodily harm; and thereupon he the ſaid* A. I. *hath prayed ſecurity of the peace,* [or, *of the good behaviour*] *to be had or granted to him againſt the ſaid* A. O. *Theſe are therefore to require you in the name of our ſaid lord the king, immediately upon the ſight hereof, to bring the ſaid* A. O. *before me, to find ſufficient for his perſonal appearance at the next general quarter ſeſſions of the peace to be holden in and for the ſaid county, then and there to anſwer the premiſſes, and in the mean time that he the ſaid* A. O. *keep the peace,* [or, *ſhall be of the good behaviour,*] *towards our ſaid lord the king, and all his liege people, and eſpecially towards the ſaid* A. I. *Given under my hand and ſeal at* Flodder *in the ſaid county, the —— day of —— in the —— year of the reign of our ſaid lord* George *the third, of* Great Britain, France, *and* Ireland, *king.*

Note; The warrants above ſet forth, ſo far as they concern the good behaviour, are framed upon the clauſe in the commiſſion, impowering one juſtice to bind to the good behaviour certain offenders therein mentioned. The following warrant for the good behaviour ſimply, as contradiſtinguiſhed from the peace, is formed on the ſtatute of the 34 *Ed.* 3. ſo often abovementioned:

Warrant for the good behaviour; on the 34 *Ed.* 3. *c.* 1. from *Lambard* and *Dalton.*

Weſtmorland. WIlliams Winder, *eſquire, and* John Thompſon, *eſquire, juſtices of our lord the king, aſſigned to keep the peace within the ſaid county, To the ſheriff of the ſaid county, to the conſtable of the hundred of —— in the ſaid county, to the petty conſtables of the town of —— in the ſaid county, and to all and ſingular the bailiffs, conſtables, and other officers of our ſaid lord the king, as well within liberties as without, in the ſame county, greeting.*

Foraſmuch as we are given to underſtand, by the informations, teſtimony, and complaint of many credible perſons, that A. O. *of —— in the county aforeſaid, gentleman, and* B. O. *of the ſame, yeoman, are not of good name and fame, nor of honeſt converſation, but evil doers, rioters, barators, and diſturbers*

of the peace of our ſaid lord the king, ſo that murder, homicide, ſtrifes, diſcords, and other grievances and damages amongſt the lieges of our ſaid lord the king concerning their bodies are likely to ariſe thereby; Therefore on the behalf of our ſaid lord the king, we command you, and every of you, that you omit not by reaſon of any liberty within the county aforeſaid, but that you attach, or one of you do attach the aforeſaid A. O. *and* B. O. *ſo that you have them before us or others our fellows, juſtices of our ſaid lord the king, aſſigned to keep the peace within the county aforeſaid, as ſoon as they can be taken* [or, *before the juſtices of our ſaid lord the king, aſſigned to keep the peace within the county aforeſaid, and alſo to hearand determine divers felonies, treſpaſſes, and other miſdemeanors in the ſaid county committed, at the next general quarter ſeſſions of the peace to be holden in and for the ſaid county*] *to find then before us, (or the ſaid juſtices) ſufficient ſurety and mainprize for their good behaviour towards our ſaid lord the king, and all his people, according to the form of the ſtatute in ſuch caſe made and provided. And this you ſhall in no wiſe omit, on the peril that ſhall enſue thereon. And have you before us or before the ſaid juſtices* [*at the ſeſſions aforeſaid*] *this precept. Given under our ſeals at* Brough *in the county aforeſaid, the ——— day of ——— in the ——— year of the reign of our ſaid lord ——.*

Recognizance for the peace or good behaviour.

Weſtmorland. BE *it remembred, that on the ——— day of —— in the —— year of the reign of our lord* George *the third, of* Great Britain, France, *and* Ireland, *king, defender of the faith, and ſo forth,* A. O. *of —— in the county aforeſaid, yeoman,* A. S. *of the ſame place, yeoman, and* B. S. *of the ſame place, yeoman, came before me* Henry Chaytor, *clerk, one of the juſtices of our ſaid lord the king, aſſigned to keep the peace within the ſaid county, and acknowledged themſelves to owe to our ſaid lord the king, to wit, the ſaid* A. O. *the ſum of* 20l. *and the ſaid* A. S. *the ſum of* 10l. *and the ſaid* B. S. *the ſum of* 10l. *of good and lawful money of* Great Britain, *to be reſpectively made and levied of their ſeveral goods and chattels, lands and tenements, to the uſe of our ſaid lord the king, his heirs and ſucceſſors, if he the ſaid* A. O. *ſhall fail in performing the condition indorſed,* [or, *underwritten*].

Acknowledged before me
Henry Chaytor.

The

The condition of this recognizance is ſuch, that if the within bounden [or, *above bounden*] A. O. *ſhall perſonally appear at the next general quarter ſeſſions of the peace to be holden in and for the county aforeſaid, to do and receive what ſhall then and there be enjoined him by the court, and in the mean time ſhall keep the peace,* [or, *be of the good behaviour*, or, *ſhall keep the peace and be of the good behaviour*] *towards the king and all his liege people, and eſpecially towards* A. I. *of* —— *in the ſaid county, yeoman; Then the ſaid recognizance ſhall be void, or elſe remain in its force.*

Mittimus for want of ſureties.

Weſtmorland. { To the conſtable of ——— and to the keeper of ——— in the ſaid county.

WHEREAS A.O. *of* —— *in the ſaid county, yeoman, is now brought before me Sir* William Dalſton, *knight, one of the juſtices of our lord the king, aſſigned to keep the peace in and for the ſaid county, requiring him to find ſufficient ſureties to be bound with him in a recognizance for his perſonal appearance at the next general quarter ſeſſions of the peace to be holden in and for the ſaid county, and in the mean time to keep the peace* [or, *be of the good behaviour*] *towards our ſaid lord the king, and all his liege people, and eſpecially towards* A. I. *of* —— *in the ſaid county, yeoman; and whereas he the ſaid* A. O. *hath refuſed and doth now refuſe before me to find ſuch ſureties: Theſe are therefore in the name of our ſaid lord the king, to command you the ſaid conſtable, forthwith to convey the ſaid* A. O. *to the common gaol of our ſaid lord the king,* [or, *to the houſe of correction*] *at* —— *in the ſaid county, and to deliver him to the keeper thereof there, together with this precept: And I do, in the name of our ſaid lord the king, hereby command you the ſaid keeper, to receive the ſaid* A. O. *into your cuſtody in the ſaid gaol* [or, *houſe of correction*] *and him there ſafely to keep, until he ſhall find ſuch ſureties as aforeſaid. Given under my hand and ſeal, at* Acorn Bank *in the ſaid county, the* ——— *day of* ——— *in the* ——— *year of the reign of our ſaid lord* George *the third, of* Great Britain, France, *and* Ireland, *king.*

The

The form of a *ſuperſedeas*.

Weſtmorland. ROger Wilſon, *eſquire, one of the juſtices of our lord the king, aſſigned to keep the peace within the county aforeſaid, To the ſheriff, bailiff, conſtables, and others the faithful miniſters and ſubjects of our ſaid lord the king within the ſaid county, and to every of them, greeting.*

Foraſmuch as A. O. *of* ——— *in the ſaid county, yeoman, hath perſonally come before me at* Caſterton *in the ſaid county, and hath found ſufficient ſurety, that is to ſay,* A. S. *of* ——— *yeoman, and* B. S. *of* ——— *yeoman, either of the which hath undertaken for the ſaid* A. O. *under the pain of* 20*l.* *and he the ſaid* A. O. *hath undertaken for himſelf under the pain of* 40*l.* *that he the ſaid* A. O. *ſhall perſonally appear at the next general quarter ſeſſions of the peace to be holden in and for the ſaid county, then and there to do and receive what ſhall be injoined him by the ſaid court, and in the mean time ſhall well and truly keep the peace* [or, *be of the good behaviour*] *towards our ſaid lord the king, and all his liege people, and eſpecially towards* A. I. *of* ——— *yeoman: Therefore on behalf of our ſaid lord the king I do command you, and every of you that you utterly forbear and ſurceaſe to arreſt, take, impriſon, or otherwiſe by any means for the ſaid cauſe to moleſt the ſaid* A. O. *and if you have, for the ſaid occaſion, and for none other, taken and impriſoned him the ſaid* A. O. *that then him you deliver, or cauſe to be delivered and ſet at liberty, without further delay. Given at* Caſterton *aforeſaid, in the county aforeſaid, under my ſeal, this* —— *day of* ——— *in the* —— *year of the reign of* ——.

This *ſuperſedeas* may be alſo in the name of the king, under the teſte of the juſtice, thus:

GEORGE *the third, by the grace of God,* &c. *To the ſheriff,* &c. *greeting: Foraſmuch as* A. O. *hath come before* Henry Lowther, *clerk, one of our juſtices aſſigned to keep the peace within our ſaid county, and hath found,* &c. *We therefore command you, and every of you, that ye forbear,* &c. *Witneſs the ſaid* Henry Lowther, *at* Lowther *in the county aforeſaid, the* ——— *day of* ——— *in the* —— *year of our reign.*

Releaſe

Releaſe of the ſurety for the peace, or good behaviour.

Weſtmorland. BE *it remembered, that on the* ——— *day of* —— *in the* —— *year of* ——— *the aforeſaid* A. I. *hath come before me the ſaid* Fletcher Fleming, *eſquire, and freely remiſed and releaſed, as much as in him lieth, the aforeſaid ſecurity of the peace* [or, *of the good behaviour*] *by him prayed before me againſt the abovenamed* A. O. *In witneſs whereof, I the ſaid* Fletcher Fleming, *at* Rayrig, *in the county aforeſaid, have hereunto ſet my ſeal. Given,* &c.

This is to be written under the recognizance; and if the juſtice only ſign, without ſealing it, it is well enough, eſpecially where the recognizance is without ſeal.

Or, the releaſe may be by itſelf, thus:

Weſtmorland. BE *it remembered, that* A. I. *of* ——— *in the ſaid county, yeoman, on the* ——— *day of* ——— *in the* ——— *year of the reign of* ——— *came before me* William Tatham, *eſquire, one of the juſtices of our lord the king, aſſigned to keep the peace within the ſaid county, at* Aſkham *in the ſaid county, and there remiſed and freely releaſed to* A. O. *of* ——— *in the ſaid county, yeoman, the ſurety of the peace* [or, *good behaviour*] *by him the ſaid* A. I. *before me prayed againſt the ſaid* A. O. *Given,* &c.

Or, if it is before another juſtice, then ſay, ——— *the ſurety of the peace* [or, *good behaviour*] *which he has againſt* A. O. *of* ——— *in the ſaid county, yeoman. Given,* &c.

But note, that none of theſe releaſes will diſcharge the recognizance, or the appearance of the party bound thereby; but that he muſt appear according to the condition of the recognizance, for the ſafeguard of his recognizance.

Liberate to diſcharge one committed for want of ſureties.

Weſtmorland. STanwix Nevinſon, *eſquire, one of the juſtices of our lord the king, aſſigned to keep the peace in the county aforeſaid, To the keeper of his majeſty's gaol at* ——— *in the ſaid county, greeting.*

Foraſmuch

Forasmuch as A. O. *in the prison of our said lord the king, in your custody now being, at the suit of* A. I. *of* ——— *in the said county, yeoman, for the want of his finding sufficient sureties for his personal appearance at the next general quarter sessions of the peace, to be holden in and for the said county, and for his keeping the peace* [or, *being of the good behaviour*] *in the mean time, towards our said lord the king, and all his liege people, and especially towards the said* A. I. *hath found before me sufficient sureties, to wit,* A. S. *of* ——— *yeoman, and* B. S. *of* ——— *yeoman, either of which hath undertaken for the said* A. O. *under the pain of* 20*l.* *and he the said* A. O. *hath undertaken for himself under the pain of* 40*l.* *that he the said* A. O. *shall and will personally appear at the next general quarter sessions of the peace to be holden in and for the said county, and shall well and truly keep the peace* [or, *be of the good behaviour*] *in the mean time, towards our said lord the king, and all his liege people, and especially towards the said* A. I. *Therefore on the behalf of our said lord the king I do command you, that if the said* A. O. *do remain in the said gaol, for the said cause, and for none other, then you forbear to grieve or detain him any longer, but that you deliver him thence, and suffer him to go at large, and that upon the pain that will fall thereon. Given under my seal at* Newby Hall *in the said county, the* ——— *day of* ——— *in the* ——— *year of the reign of our said lord* George *the third of* Great Britain, France, *and* Ireland, *king.*

Surgeons. See **Physicians.**

Swans. See **Game.**

Swearing.

1. BY the canons of the church, If any offend their brethren by swearing, the churchwardens shall present them; and such notorious offenders shall not be admitted to the holy communion, till they be reformed. *Can.* 109. Punishment in the spiritual court.

And by the statute of the 19 *G.* 2. *c.* 21. It is enacted as follows:

Pecuniary penalty.

2. If any perſon ſhall profanely curſe or ſwear, and be thereof convicted on confeſſion, or oath of one witneſs, before one juſtice (or mayor), he ſhall forfeit as follows: That is to ſay,

Every day labourer, common ſoldier, or common ſeaman, 1 *s.*

Every other perſon under the degree of a gentleman, 2 *s.*

And every perſon of or above the degree of a gentleman, 5 *s.*

And for a ſecond offence after conviction, double; and for every other offence after a ſecond conviction, treble. *ſ.* 1.

Which ſaid penalties ſhall go to the poor of the pariſh where the offence was committed. *ſ.* 10.

Swearing in preſence of a juſtice.

3. If ſuch perſon ſhall curſe or ſwear in the preſence and hearing of a juſtice (or mayor); he ſhall convict him without other proof. *ſ.* 2.

In preſence of a conſtable.

4. If in the preſence and hearing of a conſtable, if he is *unknown* to ſuch conſtable, the ſaid conſtable ſhall ſeize and carry him forthwith before the *next* juſtice (or mayor of a town corporate), who ſhall convict him upon the oath of ſuch conſtable.

If he is *known* to ſuch conſtable, he ſhall ſpeedily make information before ſome juſtice (or mayor) in order that he may be convicted. *ſ.* 3.

In preſence of any other.

5. So that the conſtable, if it is in his hearing, is required to proſecute; but any other perſon alſo may proſecute if he pleaſes.

Commitment on not paying the penalty.

6. And ſuch juſtice (or mayor) ſhall immediately on ſuch information on the oath of any conſtable, or of any other perſon, cauſe the offender to appear before him; and on proof of ſuch information convict him; and if he ſhall not immediately pay down the penalty, or give ſecurity to the ſatisfaction of ſuch juſtice (or mayor); he may commit him to the houſe of correction, to be kept to hard labour for ten days. *ſ.* 4.

On not paying the charges.

7. Alſo the charges of the information and conviction, ſhall be paid by the offender, if able, over and above the penalties; which charges ſhall be aſcertained by ſuch juſtice (or mayor). *ſ.* 10.

But for the information, ſummons, and conviction, no more ſhall be paid to the juſtice's clerk, than 1 *s.* *ſ.* 14.

And if he ſhall not immediately pay ſuch charges, or give ſecurity to the ſatisfaction of ſuch juſtice (or mayor); he may

may commit him to the houſe of correction, to be kept to hard labour for ſix days, over and above ſuch time for which he may be committed for non-payment of the penalties; and in ſuch caſe, no charges of information and conviction ſhall be paid by any perſon. *ſ.* 10.

Soldier or ſeaman.

8. But if ſuch ſoldier or ſeaman ſhall not ſo pay or ſecure the penalty, and alſo the coſts of the information, ſummons, and conviction; he ſhall, inſtead of being committed to the houſe of correction, be ordered to be publickly ſet in the ſtocks for one hour for every ſingle offence, and for any number of offences whereof he ſhall be convicted at one and the ſame time two hours. *ſ.* 5.

Form of the conviction.

9. The conviction ſhall be in the words and form following;

Be it remembred, that on the ——— day of ——— in the ——— year of his majeſty's reign, A. B. *was convicted before me (one of his majeſty's juſtices of the peace for the county, riding, diviſion, or liberty aforeſaid; or before me ——— mayor of the city or town of ——— within the county of ———) of ſwearing one or more profane oath or oaths, or of curſing one or more profane curſe or curſes. Given under my hand and ſeal the day and year aforeſaid.* ſ. 8.

Certiorari.

10. Which conviction ſhall not be removed by certiorari. *id.*

Conviction to be filed.

11. And the juſtice (or mayor) ſhall cauſe the conviction to be fairly wrote upon parchment, and returned to the next general or quarter ſeſſions, to be filed by the clerk of the peace, and kept amongſt the records. *id.*

Penalty on a juſtice omitting his duty.

12. If any juſtice (or mayor) ſhall omit his duty, in the execution of this act, he ſhall forfeit 5 *l.* half to the poor where he ſhall reſide, and half to him that ſhall ſue in any court of record. *ſ.* 6.

Penalty on the conſtable.

13. Conſtable omitting his duty, ſhall on conviction, on oath of one witneſs, before one juſtice (or mayor), forfeit 40*s.* to be levied by diſtreſs, half to the informer, and half to the poor; and if he have not ſufficient goods whereon to levy, ſuch juſtice (or mayor) may commit him to the houſe of correction, to be kept to hard labour for one month. *ſ.* 7.

Act to be read in the church.

14. And this act ſhall be publickly read four times in the year, in all churches and chapels, by the miniſter immediately after morning and evening prayer, on the *Sundays*

next after *Mar.* 25. *June* 24, *Sept.* 29. and *Dec.* 25. on pain of 5*l.* for every offence, to be levied by diſtreſs, by warrant of a juſtice (or mayor). *ſ.* 13.

Limitation of actions.

15. But no perſon ſhall be proſecuted for any offence againſt this act, unleſs it be within eight days after the offence committed. *ſ.* 12.

Navy.

16. By the 22 *G.* 2. *c.* 33. Perſons belonging to his majeſty's ſhips of war, guilty of profane oaths or curſes, ſhall incur ſuch puniſhment as a court martial ſhall impoſe.

Information.

Weſtmorland. THE *information of* A. I. *of* ——— *in the county aforeſaid yeoman, made on oath this* ——— *day of* ——— *in the* ——— *year of the reign of* ——— *before me* J. P. *eſquire, one of his majeſty's juſtices of the peace for the ſaid county: Who ſaith,*

That on ——— *the* ——— *day of* ——— *now laſt paſt, at* ——— *in the pariſh of* ——— *in the county aforeſaid, he heard* A. O. *of* ——— *in the ſaid county, yeoman, ſwear one profane oath* [*or, curſe one profane curſe*] *in theſe words,* to wit, &c.

Summons.

Weſtmorland. } To the conſtable of ———

WHEREAS *information hath this day been made before me* J. P. *eſquire, one of his majeſty's juſtices of the peace for the ſaid county, upon the oath of* A. I. *of* ——— *yeoman, that on* ——— *the* ——— *day of this preſent month of* ——— *he heard* A. O. *of* ——— *in the ſaid county, yeoman, at* ——— *in the pariſh of* ——— *in the ſaid county, ſwear one profane oath* [or, *curſe one profane curſe*]: *Theſe are therefore to command you to cauſe the ſaid* A. O. *forthwith to appear before me to anſwer the premiſſes, and to be further dealt with according to law. Given under my hand and ſeal at* ——— *in the ſaid county, the* ——— *day of* ——— *in the* ——— *year of* ———.

Commitment.

Commitment.

Weſtmorland. { To the conſtable of — in the ſaid county, and to the keeper of the houſe of correction at ——— in the ſaid county.

WHEREAS A. O. *of* ——— *in the ſaid county, day labourer, is and ſtands convicted this day before me* ——— *one of his majeſty's juſtices of the peace for the ſaid county, of ſwearing one profane oath, on the* ——— *day of this preſent month of* —— *at* —— *in the pariſh of* —— *in the ſaid county, whereby he hath forfeited the ſum of* 1 s. *to the poor of the ſaid pariſh of* ——— *and whereas the ſaid* A. O. *hath refuſed and doth refuſe to pay down the ſaid ſum of* 1 s. *for the uſe of the poor aforeſaid, and alſo hath refuſed and doth refuſe to give ſatisfactory ſecurity to pay the ſame; Theſe are therefore to require you the ſaid conſtable to convey the ſaid* A. O. *to the houſe of correction at* ——— *aforeſaid, and to deliver him to the keeper thereof together with this warrant: And I do hereby command you the ſaid keeper to receive him the ſaid* A. O. *into your cuſtody in the ſaid houſe of correction, and there to detain and keep him to hard labour for the ſpace of ten days. And for ſo doing this ſhall be your ſufficient warrant. Given under my hand and ſeal at* ——— *in the ſaid county, the* ——— *day of* ——— *in the* ——— *year of the reign of* ——.

If he alſo refuſeth to pay the charges, theſe words may be added———*ſatisfactory ſecurity to pay the ſame: And whereas the ſaid* A. O. *hath likewiſe refuſed, and doth refuſe to pay the ſum of* 1 s. *which I have ſettled and aſcertained as and for the charges of the proceedings againſt him touching the premiſſes, and hath refuſed and doth refuſe to give ſatisfactory ſecurity to pay the ſame: Theſe are therefore to require you* ——— *for the ſpace of ſixteen days* ——

Sweets. See **Exciſe.**

Tanners. See **Leather.**
Tea. See **Excise.**
Tenant. See **Diſtreſs.**

Thames.

CONCERNING regulations of the navigation on the river of *Thames*, the ſame being not general, it ſhall be ſufficient only to mention the ſeveral acts touching the ſame; *viz.*

2 & 3 *P. & M. c.* 16.	2 *G.* 2. *c.* 26.
1 *J. c.* 16.	4 *G.* 2. *c.* 24.
6 & 7 *W. c.* 16.	5 *G.* 2. *c.* 20.
11 & 12 *W. c.* 21.	6 *G.* 2. *c.* 29.
4 *An. c.* 13.	10 *G.* 2. *c.* 31.
9 *An. c.* 26.	24 *G.* 2. *c.* 8.

Theft. See **Larceny.**
Theftbote. See **Felony.**

Tiles.

EVERY perſon uſing the occupation of making tile, ſhall make it good, ſeaſonable, and ſufficient, and well whited and anealed. And the earth whereof it ſhall be made, ſhall be digged and caſt up before the firſt of *November*, and ſtirred and turned before the firſt of *February*, and not wrought before the firſt of *March*; and before it be put to making of tile, ſhall be truly wrought and tried from

from ſtones; and the veins called malin or marle, and chalk, ſhall be ſerved from the earth whereof the tile is made: And plain tile ſhall be 10½ inches long, 6¼ broad, and half an inch and half a quarter thick; roof tile or creſs tile, 13 inches long, half an inch and half a quarter thick, with convenient deepneſs; gutter tile and cover tile, 10½ inches long, with convenient thickneſs, breadth, and deepneſs. And if any perſon ſet to ſale any tile made contrary to this ordinance, he ſhall forfeit to the buyer double value, and make fine and ranſom at the king's will. And every perſon that feeleth himſelf grieved, and will ſue, may have an action of debt againſt the offender. And the plaintiff in every ſuch action may recover his coſts. And the juſtices of the peace, and every of them, may hear and determine by their diſcretions, as well by examination as otherwiſe, offences againſt this ordinance, as well at the king's ſuit as the party's who ſhall be grieved. And if it appear to the juſtices, or any of them, that any perſon hath offended herein, then the ſame juſtices ſhall aſſeſs upon the offender no leſs than for every 1000 of plain tile 5*s.* for every 100 of roof tile 6*s.* 8*d.* for every 100 of corner tile or gutter tile 2*s.* And the ſaid juſtices may call before them perſons having knowledge in making of tile, to ſearch and examine the digging, turning, parting, making, whiting, and anealing. And no perſon ſhall put to ſale any tile before it be ſearched, on pain of forfeiting the ſame. And if the ſearchers find any defaulters, they ſhall preſent them at the next ſeſſions; which preſentment ſhall be as effectual as that of 12 men. And the ſearcher ſhall have of the tile maker for his labour, for every 1000 plain tile ſearched 1*d.* for every 100 roof tile an halfpenny, and for every 100 of corner tile and gutter tile a farthing. Searcher making default, ſhall forfeit 10*s.* to the king: And the juſtices may hear and determine the defaults of the ſearchers, in like manner as of the tile makers. 17 *Ed.* 4. *c.* 4.

Tin. See Pewter.

Tithes.

I. Of ſmall tithes due from any perſon.

II. Of great and ſmall tithes and other church rates and payments, due from quakers only.

III. Of contempts for tithes in the ſpiritual court.

I. Of ſmall tithes due from any perſon.

THE books in general do confound the acts of the 7 & 8 *W.* *c.* 6. concerning ſmall tithes only, due from any perſon whatſoever (whether quaker or not, being no way material); and the 7 & 8 *W.* *c.* 34. and 1 *G.* *ſt.*2. *c.* 6. concerning quakers tithes only, great and ſmall, and their other church dues. Nevertheleſs, the acts are entirely diſtinct in themſelves, and the method of proceeding in the one caſe and in the other is different in almoſt every inſtance. I have therefore taken care to extricate them out of this confuſion, by inſerting them ſeparately, and by drawing diſtinct forms upon each, according to the different methods of proceeding.

For what Tithes

1. And firſt, as to the ſmall tithe act, 7 & 8 *W.* *c.* 6. —In this caſe the proſecution muſt be for ſmall tithes only, or compoſitions for the ſame; or for offerings, oblations, or obventions: and not otherwiſe. *ſ.* 1.

And they muſt not amount to above 40*s.* a year, from any one perſon. *id.*

And they muſt have become due within two years next before the complaint. *ſ.* 6.

And they muſt not be in *London*, nor in any place where the tithes are otherwiſe ſettled by act of parliament. *ſ.* 5.

And they muſt not have been begun to be ſued for in the exchequer, or eccleſiaſtical court. *ſ.* 14.

[Note; tithes, with regard to their ſeveral *kinds* or *natures*, are divided into *prædial*, mixt, and *perſonal*. *Prædial* tithes are ſuch as ariſe merely and immediately from the ground; as grain of all ſorts, hay, wood, fruits, herbs, for a piece of land or ground being called in Latin *prædium* (whether it be arable, meadow, or paſture) the fruit

or produce thereof is called *prædial*, and conſequently the tithe payable for ſuch annual produce, is called a *prædial* tithe. *Mixt* tithes are thoſe which ariſe not immediately from the ground, but from things immediately nouriſhed by the ground, as by means of goods depaſtured thereupon, or otherwiſe nouriſhed with the fruits thereof; as colts, calves, lambs, chickens, milk, cheeſe, eggs. *Perſonal* tithes are ſuch profits as do ariſe by the honeſt labour and induſtry of man, employing himſelf in ſome perſonal work, artifice, or negociation; being the tenth part of the clear gain, after charges deducted.—— Tithes, with regard to *value*, are divided into *great* and *ſmall*. *Great* tithes, are chiefly corn, hay, and wood. *Small* tithes, are the *prædial* tithes of other kinds, together with thoſe which are called mixt, and perſonal.—*Offerings*, *oblations*, and *obventions*, are the cuſtomary payments for communicants at *Eaſter*, for marriages, chriſtenings, churching of women, burials, and ſuch like.]

Demand of the tithes.

2. Of theſe demand muſt firſt be made. *ſ.* 1.

Complaint.

3. And if any perſon ſhall fail in the payment of the ſame, by the ſpace of 20 days after ſuch demand; the perſon to whom the ſame ſhall be due, may make complaint in writing to two juſtices of the peace, neither of whom is patron of the church or chapel, nor intereſted in the tithes. *ſ.* 1.

H. 6 *G. K.* and *Furneſs.* Order for non-payment of ſmall tithes was quaſhed, becauſe ſaid only *upon complaint* generally, and the ſtatute requires the complaint to be *in writing*. Str. 264.

Summons.

4. Hereupon the ſaid juſtices ſhall ſummon in writing under their hands and ſeals, by reaſonable warning, every perſon againſt whom ſuch complaint ſhall be made. *ſ.* 2.

Hearing.

5. And after appearance, or default of appearance (the warning or ſummons being proved upon oath), the ſaid juſtices ſhall proceed to hear and determine the complaint. *ſ.* 2.

Pleading an exemption.

6. And if on hearing the ſame, any perſon ſhall inſiſt on a preſcription, compoſition, *modus decimandi*, agreement, or title, whereby he ought to be freed from payment, and deliver the ſame in writing to the juſtices, ſubſcribed by him, and ſhall then give the party complaining ſecurity to the ſatisfaction of the juſtices, to pay all ſuch coſts and damages, as upon a trial at law ſhall be

be given againſt him; in that caſe, the juſtices ſhall forbear to give judgment. *ſ.* 8.

A judication. 7. Otherwiſe, they ſhall in writing under their hands and ſeals, adjudge the caſe; and give ſuch compenſation, as they ſhall judge to be juſt and reaſonable; and alſo ſuch coſts and charges, not exceeding 10 *s.* as upon the merits of the cauſe ſhall appear juſt.

Alſo they may give coſts, not exceeding 10 *s.* to the party proſecuted, if they ſhall find the complaint to be falſe and vexatious. *ſ.* 12.

Demand of the ſum adjudged. 8. Of which adjudication notice ſhall be given to party complained of. *ſ.* 3.

Diſtreſs and ſale. 9. And if any perſon ſhall refuſe or neglect by the ſpace of ten days after ſuch notice given, to pay or ſatisfy ſuch ſum adjudged; the conſtables and churchwardens, or one of them, ſhall by warrant under the hands and ſeals of the ſaid juſtices, diſtrain his goods, and after detaining them three days (if the money, together with reaſonable charges for making and detaining the diſtreſs, be not paid in the mean time) ſhall publickly ſell the ſame, and pay to the party complaining the ſum adjudged, retaining to themſelves ſuch reaſonable charges for making and keeping the diſtreſs, as the ſaid juſtices ſhall think fit. *ſ.* 3.

But by the 27 *G.* 2. *c.* 20. The diſtreſs ſhall be detained not leſs than four days, nor more than eight; and the officers may deduct the charges not only of *making* and *keeping* the diſtreſs, but alſo of the *ſale*; but then the juſtices cannot by the ſaid act of the 27 *G.* 2. adjuſt the *quantum* of the charges of *ſale*, as they may by this act the charges of *making* and *keeping* the diſtreſs.

Diſtreſs out of the county. 10. And if any perſon againſt whom judgment ſhall be obtained, ſhall remove out of the county before the ſum ſhall be levied; the juſtices who made the judgment, or one of them, ſhall certify the ſame under hand and ſeal, to any juſtice of ſuch other county, who ſhall by his warrant order the ſame to be levied in like manner. *ſ.* 10.

Appeal. 11. Any perſon aggrieved by the judgment of the two juſtices, may appeal to the next ſeſſions; and if they confirm the judgment, they ſhall decree the ſame by order of ſeſſions, and give coſts againſt the appellant, to be levied by diſtreſs, as to them ſhall ſeem juſt and reaſonable. *ſ.* 7.

Certiorari. 12. And no proceedings herein ſhall be removed by certiorari, or otherwiſe; unleſs the title of ſuch tithes, oblations, or obventions ſhall be in queſtion. *ſ.* 7.

13. Finally,

13. Finally, Every perſon who ſhall obtain any judgment, or againſt whom any ſuch judgment ſhall be obtained, ſhall cauſe the ſame to be inrolled at the next ſeſſions; for which the clerk of the peace ſhall have 1 s. *ſ.* 9. Adjudication to be recorded.

II. Of great and ſmall tithes and other church rates and payments, due from quakers only.

1. This is upon the acts of the 7 & 8 *W.* *c.* 34. and 1 *G. ſt.* 2. *c.* 6.—And the proſecution in this caſe may be, for any tithes or church rates, or any cuſtomary or other rights, dues, or payments belonging to any church or chapel, which of right by law and cuſtom ought to be paid for the ſtipend or maintenance of any miniſter or curate officiating in any church or chapel. For what tithes and dues.

Provided that the ſame do not exceed the value of 10 *l.* —But no time is limited, within which the ſame ſhall become due.

2. And where any quaker ſhall refuſe to pay or compound for the ſame, any parſon, vicar, curate, farmer, or proprietor of ſuch tithes, or any churchwarden or chapelwarden, or other perſon who ought to have, receive, or collect, any ſuch tithes, rates, dues, or payments, may make complaint to any two juſtices, other than ſuch as is patron of the church or chapels or any way intereſted in the tithes. Complaint.

Note; here is no number of days limited, between the time of refuſal and the complaint; nor is it thereby required that ſuch complaint ſhall be in writing.

3. Upon which complaint the ſaid juſtices ſhall ſummon in writing under their hands and ſeals, by reaſonable warning, ſuch quaker. Summons.

4. And after appearance, or on default of appearance (the warning or ſummons being proved before them upon oath), they may proceed to examine on oath the truth of the complaint, and to aſcertain and ſtate what is due and payable. Hearing.

5. And by order under their hands and ſeals, they may direct and appoint the payment thereof; ſo as the ſum ordered (as is aforeſaid) do not exceed 10 *l.* And alſo ſuch coſts and charges, as they ſhall think reaſonable, not exceeding 10 *s.* Adjudication.

6. And

Diſtreſs and ſale.

6. And on refuſal to pay, it ſhall be lawful for any one of the two *next* juſtices, by warrant under his hand and ſeal, to levy the ſame by diſtreſs and ſale, rendring the overplus, the neceſſary charges of diſtraining being thereout firſt deducted and allowed by the ſaid juſtice; unleſs it be in the caſe of appeal, and then no warrant of diſtreſs ſhall be granted, till after the appeal ſhall be determined.

Therefore it ſeemeth beſt not to make out, at leaſt not to execute, the warrant of diſtreſs, until after the next ſeſſions.

Note again, here is no time limited for detaining the diſtreſs, nor charges allowed for the keeping of it; ſo that it may be ſold immediately.

And by the ſtatute of the 27 *G.* 2. *c.* 20. which in all other caſes gives the juſtices power, in their warrant of diſtreſs, to order the goods diſtrained to be detained for a certain time, not leſs than four days, the *tithes* and *church rates* of quakers (although not thoſe other dues and payments) abovementioned are excepted.

Alſo, it is obſervable here, that the ſtatute of the 7 & 8 *W.* limits the proceedings to the two *next* juſtices (not intereſted); and the ſtatute of the 1 *G.* enlarges the ſame to *any* two juſtices (not intereſted) as to the complaint, ſummons, and order, but reſtrains the *diſtreſs* to the limitations in the ſtatute of the 7 & 8 *W.* that is, to one of the two *next* juſtices as aforeſaid; which poſſibly may have been an overſight; for it may happen hereupon, that neither of the two juſtices which made the order, can inforce the execution of it by diſtreſs. To prevent which inconvenience, it may be proper that *one* at leaſt of the juſtices complained to, be one of the two next juſtices (not intereſted.)

Appeal.

7. Any perſon aggrieved by the judgment of the two juſtices, may appeal to the next ſeſſions; where if the judgment ſhall be affirmed, they ſhall decree the ſame by order of ſeſſions, and give coſts againſt the appellant, to be levied by diſtreſs and ſale, as to them ſhall ſeem reaſonable.

Certiorari.

8. And no proceedings herein ſhall be removed by certiorari, or otherwiſe, unleſs the title of ſuch tithes ſhall be in queſtion.

H. 31 *G.* 2. *K.* againſt *Roger Wakefield* and others. An order of two juſtices was made againſt three perſons being quakers, for the payment of certain cuſtomary payments, called

called *chapel ſalary*, to the reverend Mr. *Smith*, curate of the chapel of *Burniſide* in *Weſtmorland*, where the ſaid quakers had eſtates chargeable with the ſaid payments. On appeal to the ſeſſions, the order was confirmed. The quakers moved for a certiorari, and tho' cauſe was ſhewn againſt the iſſuing of it, yet a certiorari was granted; and the return was filed, and exceptions were taken to it, and argued at the bar. Lord Mansfield chief juſtice delivered the opinion of the court: That the certiorari ought not to have iſſued at all; that the return ſhould be taken off the file, and all proceedings thereon fall to the ground, and that the orders of the juſtices and ſeſſions ſhould be remanded. The order of the juſtices (he obſerved) was made on the ſtatute of the 1 *G. ſt.* 2. *c.* 6. which extends the 7 & 8 *W. c.* 34. concerning tithes, to all cuſtomary payments due to clergymen. Thoſe two acts are to be taken together as one law. They were intended for the benefit of the quakers; to prevent their being liable to expenſive ſuits for refuſing to pay tithes upon ſcruples of conſcience, by giving an apparent compulſory method of levying tithes and other cuſtomary payments in a ſummary way. This proceeding cannot be removed by certiorari, unleſs the title to theſe cuſtomary payments comes in queſtion: And on this proviſo the preſent queſtion ariſes. The affidavits read on the original motion for the certiorari ſet forth, that before the juſtices and the ſeſſions the defendants controverted the right of the curate to theſe cuſtomary payments. The affidavits againſt the certiorari ſay, that theſe payments have been made from time immemorial; that no inhabitant ever diſputed it but theſe quakers; that they have enjoyed the meſſuages but a few years, and that the former inhabitants never diſputed the right of the parſon. Taking theſe affidavits together, it is clear that the quakers controvert the right to the cuſtomary only as all quakers controvert the payment of all dues to all clergymen upon ſcruples of conſcience, which is the caſe directly within the act, and the proceeding muſt therefore follow the directions of the act. The quakers themſelves have acknowledged the juriſdiction of the juſtices, by appealing to the ſeſſions; whereas had they intended to diſpute the title to theſe cuſtomary payments, they would at firſt have removed the order of two juſtices by certiorari. The only difficulty remaining ariſes from the return being already filed. But there are ſeveral inſtances of this court's ſuperſeding a certiorari after the return filed: As where an

order

order of juſtices is removed, and it appears upon the return, that the parties had a right to appeal to the ſeſſions, and that the time for appealing was not expired when the certiorari iſſued; in ſuch a caſe, this court ſuperſedes the writ of certiorari, *quia improvide emanavit*. The ſame muſt be done in the preſent caſe.

III. Of contempts for tithes in the ſpiritual court.

Contempt of proceſs.

1. By the 27 *H.* 8. *c.* 20. If the eccleſiaſtical judge ſhall, for any contempt, contumacy, diſobedience, or other miſdemeanor, of any defendant in the caſe of tithes, make information and requeſt to the juſtices of the peace of the ſhire where the offender dwelleth, to aſſiſt him to order and reform any ſuch perſon; two of the ſaid juſtices (1 *Q.*) may cauſe the perſon to be attached, and commit him to ward, till he ſhall have found ſufficient ſurety, to be bound to the king by recognizance or otherwiſe, to give due obedience to the proceſs, proceedings, decrees, and ſentences of the eccleſiaſtical court where the ſuit ſhall be. *ſ.* 1.

Contempt after judgment.

2. And by the 32 *H.* 8. *c.* 7. If any perſon, after ſentence definitive given againſt him in the eccleſiaſtical court, ſhall obſtinately and wilfully refuſe to pay his tithes, or duties, or ſums of money adjudged for the ſame; two juſtices (1 *Q.*) may, upon information, certificate, or complaint in writing by the eccleſiaſtical judge, cauſe the party refuſing to be attached, and committed to the next gaol, till he ſhall have found ſufficient ſureties by recognizance or otherwiſe, to perform the ſaid definitive ſentence and judgment. *ſ.* 4.

Complaint for ſmall tithes; on the 7 & 8 *W. c.* 6.

TO J. P. *and* K. P. *eſquires, two of his majeſty's juſtices of the peace in and for the county of* ——— A. I. *of* ——— *in the ſaid county, clerk, humbly complaineth,*

That he the ſaid complainant did by the ſpace of 20 *days and upwards before the day of the date hereof, demand of* A. O. *of* ——— *in the pariſh of* ——— *in the county aforeſaid, yeoman, the ſmall tithes, offerings, oblations, and obventions juſtly become due within two years now laſt paſt, from him the ſaid* A. O. *unto him the ſame complainant, to the value of* 4 l.

and

and that he the ſaid A. O. *did upon the ſaid demand refuſe, and doth yet refuſe, to pay and compound for, and hath not paid nor compounded for the ſame, or any part thereof: The ſaid complainant therefore prayeth ſuch redreſs in the premiſſes, as to you ſhall ſeem meet, and as to the law doth appertain. Signed the ——— day of ——— in the ——— year of ———.*

A. I.

Summons for ſmall tithes; on the 7 & 8 *W. c.* 6.

Weſtmorland. { To the conſtable of ———

WHEREAS *complaint in writing hath been made unto us ——— two of his majeſty's juſtices of the peace for the ſaid county, by* A. I. *of —— in the ſaid county, clerk, that* A. O. *of ——— in the pariſh of ——— in the ſaid county, yeoman, hath for above the ſpace of* 20 *days before the time of the ſaid complaint ſo made unto us as aforeſaid, refuſed to compound for, or to pay unto him the ſaid* A. I. *and hath not yet compounded for, nor paid, the ſmall tithes, offerings, oblations, and obventions, juſtly due from him the ſaid* A. O. *to him the ſaid* A. I. *Theſe are therefore to command you forthwith, upon ſight hereof, to ſummon the ſaid* A. O. *to appear before us at the houſe of ——— in ——— in the ſaid county, on* Saturday *the ——— day of this preſent month of ——— at the hour of ——— in the forenoon of the ſame day, to anſwer unto the ſaid complaint. And be you then there to certify what you ſhall have done in the premiſſes. Given under our hands and ſeals at ——— in the ſaid county, the ——— day of ——— in the ——— year of ———.*

Order for payment of ſmall tithes; on the 7 & 8 *W. c.* 6.

Weſtmorland. WHEREAS *complaint in writing hath been made unto us——— two of his majeſty's juſtices of the peace for the ſaid county, by* A. I. *vicar of the pariſh of ——— in the ſaid county, that* A. O. *of ——— in the ſaid pariſh of ——— in the county aforeſaid, yeoman, did refuſe for the ſpace of* 20 *days next before*

the

the time of the ſaid complaint ſo made unto us as aforeſaid, to pay or compound for his ſmall tithes, offerings, oblations, and obventions, ariſing in the ſaid pariſh of ——— and due to him, the ſaid A. I. *We therefore the ſaid juſtices, being neither of us patron of the pariſh church of ——— aforeſaid, nor any ways intereſted in any of the ſaid tithes, offerings, oblations, or obventions, having duly ſummoned the ſaid* A. O. *before us, and having duly examined the truth and juſtice of the ſaid complaint upon oath, do find that there is juſtly due from the ſaid* A. O. *to the ſaid* A. I. *the ſum of* 4 l. *being the value of the ſaid tithes, offerings, oblations, and obventions, become due within two years laſt paſt; and do therefore adjudge and order the aforeſaid* A. O. *to pay or cauſe to be paid unto the ſaid* A. I. *the aforeſaid ſum of* 4 l. *and alſo the ſum of* 10 s. *for the coſts and charges of the ſaid* A. I. *in proſecuting the ſaid* A. O. *for the recovery of his ſaid juſt dues. Given under our hands and ſeals at ——— in the ſaid county, the ——— day of ——— in the ——— year of the reign of ———.*

Diſtreſs for ſmall tithes; on the 7 & 8 *W. c.* 6.

Weſtmorland. { To the conſtable of ——— in the ſaid county, and to the churchwardens of the pariſh of ——— in the ſaid county, and to every of them.

WHEREAS *upon the complaint on writing of* A. I. *vicar of the pariſh of ——— aforeſaid, in the county aforeſaid,* A. O. *of ——— in the ſaid pariſh, in the county aforeſaid, yeoman, hath been duly ſummoned to appear before us ——— two of his majeſty's juſtices of the peace for the ſaid county, to be examined for the non-payment of the ſmall tithes, offerings, oblations, and obventions, due unto the ſaid* A. I. *And whereas we the ſaid juſtices, being neither of us patron of the pariſh church of ——— aforeſaid, nor any way intereſted in any of the ſaid tithes, offerings, oblations, or obventions, have duly examined the truth and juſtice of the ſaid complaint, and have ordered him the ſaid* A. O. *to pay unto the ſaid* A. I. *the ſum of* 4 l. *being the value of the ſmall tithes, offerings, oblations, and obventions, become due from him the ſaid* A. O. *to him the ſaid* A. I. *within two years next before the ſaid complaint ſo made unto us as aforeſaid, together with the ſum of* 10 s. *for the coſts and charges of the ſaid* A. I. *for the recovery of his ſaid juſt dues; making in the whole the ſum*

of

of 4l. 10s. *And whereas it appeareth unto us the ſaid juſtices, that the ſaid* A. O. *had due notice of our ſaid order for the ſpace of ten days and upwards before the day of the date hereof, but hath refuſed to pay, and hath not yet paid the ſum of* 4l. 10s. *nor any part thereof: Theſe are therefore to command you jointly and ſeverally, that you, or ſome or one of you, do forthwith diſtrain the goods and chattels of the ſaid* A. O. *and in caſe the ſaid ſum of* 4l. 10s. *together with your reaſonable charges of making and detaining the ſaid diſtreſs, be not paid, or tendered to be paid by him the ſaid* A. O. *in* [*four*] *days next after ſuch diſtreſs made, that then you do make publick ſale of the ſaid goods and chattels ſo diſtrained as aforeſaid, and out of the money ariſing from ſuch ſale, that you pay or cauſe to be paid unto him the ſaid* A. I. *the ſaid ſum of* 4l. 10s. *and thereout alſo deduct and detain your reaſonable charges of making, keeping, and ſelling the ſaid diſtreſs; and if any overplus ſhall remain, after ſuch payment and deduction as aforeſaid, that then you do render the ſame unto him the ſaid* A. O. *upon demand. Given under our hands and ſeals at* ——— *in the ſaid county, the* ——— *day of* ——— *in the* ——— *year of* ———.

Summons of a quaker for tithes; on the 7 & 8 *W. c.* 34. and 1 *G. ſt. c.* 6.

Weſtmorland. { To the conſtable of—in the ſaid county.

WHEREAS A. I. *clerk, rector of the pariſh church of* ——— *in the ſaid county, hath complained unto us* J. P. *and* K. P. *eſquires, two of his majeſty's juſtices of the peace for the ſaid county, that* A. O. *of* ——— *in the pariſh of* ——— *aforeſaid, in the county aforeſaid, yeoman, being a perſon commonly called a quaker, hath refuſed to pay unto him the ſaid* A. I. *or to compound for the tithes, and other rights, dues, and payments belonging to the church of* ——— *aforeſaid, and juſtly due to him the ſaid* A. I. *from him the ſaid* A. O. *Theſe are therefore to require you forthwith to ſummon the ſaid* A. O. *to appear before us at the houſe of* ——— *in* ——— *in the ſaid county, on* Saturday *the* ——— *day of this preſent month of* ——— *at the hour of* ——— *in the forenoon of the ſame day, to anſwer unto the ſaid complaint. And be you then there to certify what you ſhall have*

done in the premiſſes. Given under our hands and ſeals at ——— in the ſaid county, the ——— day of ——— in the ——— year of the reign of ———.

Order for quakers tithes; on the 7 & 8 *W.* *c* 34. and 1 *G.* *ſt.* 2. *c.* 6.

Weſtmorland. WHEREAS *complaint hath been made unto us ——— two of his majeſty's juſtices of the peace for the ſaid county, by* A. I. *vicar of the pariſh of ——— in the ſaid county, that* A. O. *of the pariſh of ——— aforeſaid in the county aforeſaid, being a perſon commonly called a quaker, hath refuſed to pay to, or to compound with him the ſaid* A. I. *for his tithes, and other rights, dues, and payments, belonging to the church of ——— aforeſaid, and juſtly due unto him the ſaid* A. I. *We therefore the ſaid juſtices, being neither of us patron of the pariſh church of —— aforeſaid, nor any way intereſted in any of the ſaid tithes, rights, dues, or other payments, having duly ſummoned the ſaid* A. O. *before us, and having alſo duly examined the truth of the ſaid complaint upon oath, do find that there is juſtly due for the ſame from the ſaid* A. O. *to him the ſaid* A. I. *the ſum of* 10l. *and do order and appoint the aforeſaid* A. O. *to pay or cauſe to be paid unto him the ſaid* A. I. *the aforeſaid ſum of* 10l. *And we do alſo order and appoint the aforeſaid* A. O. *to pay or cauſe to be paid unto him the ſaid* A. I. *the further ſum of* 10s. *for ſuch coſts and charges concerning the premiſſes as upon the merits of the cauſe do appear to us juſt and reaſonable. Given under our hands and ſeals at ——— in the ſaid county, the ——— day of ——— in the ——— year of the reign of ——.*

Diſtreſs for quakers tithes; on the 7 & 8 *W.* *c.* 34 and 1 *G.* *ſt.* 2. *c.* 6.

Weſtmorland. } To the conſtable of ——.

WHEREAS *upon the complaint of* A. I. *vicar of the pariſh church of ——— in the ſaid county,* A. O. *of ——— in the pariſh aforeſaid, in the county aforeſaid, yeoman, being a perſon commonly called a quaker, hath been duly*

auly ſummoned to appear before J. P. *and* K. P. *eſquires, two of his majeſty's juſtices of the peace in and for the ſaid county, to be examined for non-payment of his tithes, and other rights, dues, and payments, belonging to the church of* ——— *aforeſaid, due unto him the ſaid* A. I. *from him the ſaid* A. O. *And whereas the ſaid juſtices, upon examination thereof, have ordered him the ſaid* A. O. *by writing under their hands and ſeals, to pay unto the ſaid* A. I. *the ſum of* 10 l. *for ſuch his tithes, and other rights, dues, and payments as aforeſaid, and moreover the ſum of* 10 s. *for the charges of him the ſaid* A. I. *in recovering the ſame, making in the whole the ſum of* 10 l. 10 s. *And whereas it appeareth unto me* J. P. *eſquire, being one of the ſaid juſtices, and alſo being one of the two next juſtices to the pariſh church of* —— *aforeſaid, in the county aforeſaid, not being patron of the ſaid church, nor any way intereſted in any of the ſaid tithes, or other rights, dues, or payments, that the ſaid* A. O. *hath had due notice of the ſaid order, but hath refuſed, and doth refuſe to pay, and hath not paid the ſaid ſum of* 10 l. 10 s. *nor any part thereof: Theſe are therefore to authorize and command you, that you do forthwith levy the aforeſaid ſum of* 10 l. 10 s. *by diſtreſs and ſale of the goods and chattels of him the ſaid* A. O. *and out of the money ariſing from ſuch ſale, that you do pay or cauſe to be paid unto him the ſaid* A. I. *the ſaid ſum of* 10 l. 10 s. *and thereout alſo deduct your neceſſary charges of diſtraining. And if any overplus ſhall remain, after ſuch payment and deduction as aforeſaid, that you do render the ſame unto him the ſaid* A. O. *Given under my hand and ſeal at* ——— *in the ſaid county, the* ——— *day of* ——— *in the* ——— *year of the reign of* ———.

Tobacco.

Concerning the exporting of tobacco pipe clap, ſee **Woollen Manufacture.**

1. NO perſon ſhall plant any tobacco; on pain of forfeiting the ſame, or the value thereof, or 40 s. for every rod or pole of ground planted with it, half to the king, and half to him that ſhall ſue in any court of record. 12 *C.* 2. *c.* 34. *ſ.* 1. And beſides the ſaid penalty, he ſhall Planting tobacco.

moreover forfeit 10*l.* for every rod or pole; one third to the king, one third to the poor, and one third to him that ſhall ſue in like manner. 15 *C.* 2. *c.* 7. *ſ.* 18.

And by the 22 & 23 *C.* 2. *c.* 26. (which by the 5 *G. c.* 11. is continued along with the act of tonnage and poundage of the 12 *C.* 2. *c.* 4.) the juſtices ſhall a month before every ſeſſions, iſſue their warrants to all high and petty conſtables, to ſearch what tobacco is planted, cured, or made, and by whom; and to make preſentment in writing on oath at the next ſeſſions, of the names of ſuch perſons as have planted, cured, or made any tobacco, and what quantity of land is or was planted, and who are the tenants or occupiers thereof, (who ſhall alſo be deemed the planters). *ſ.* 2.

Which preſentment ſhall be filed by the clerk of the peace in open ſeſſions; and after ſuch filing, ſhall be a ſufficient conviction in law of the perſons preſented, unleſs ſuch perſon preſented (having notice given to him of the preſentment by delivery of a copy thereof to him or leaving ſuch copy at his uſual place of abode in the preſence of one witneſs, ten days before the next quarter ſeſſions) ſhall at the next ſeſſions after ſuch notice traverſe the preſentment, and find ſureties for proſecuting and trying ſuch traverſe at the quarter ſeſſions next after ſuch traverſe entred or made. *ſ.* 3.

And all conſtables, bailiffs, and other publick officers, ſhall within 14 days after warrant from two juſtices, calling to their aſſiſtance whom they ſhall find neceſſary, pluck up, burn, conſume, tear in pieces, and utterly deſtroy all tobacco ſeed, plant, and leaf planted, ſowed, or growing in any field or ground. *ſ.* 4.

And if any tobacco ſhall be ſuffered to grow, or be conſumed in ſeed, plant, or leaf, by the ſpace of 14 days after receipt of ſuch warrant by the ſaid conſtables or other officers; they ſhall for every offence forfeit 5*s.* for every rod, perch, or pole of ground planted with tobacco, and ſo proportionably for a greater or leſſer quantity, half to the king, and half to him that ſhall ſue. *ſ.* 5.

And if any ſhall refuſe or neglect to aſſiſt the conſtable, he ſhall on conviction before two juſtices, forfeit 5*s.* to be levied by warrant of the ſaid juſtices by diſtreſs; and if no diſtreſs can be found, to be committed to the common gaol for one week. *ſ.* 6.

And if any perſon ſhall reſiſt the conſtable or other perſon in the due execution hereof, he ſhall, on conviction before

two

two juſtices, forfeit 5 *l.* by warrant of the ſaid juſtices by diſtreſs; and if no diſtreſs can be found, to be committed to the common gaol for three months. *ſ.* 7.

But nothing herein ſhall hinder planting the ſame in gardens for phyſick or chirurgy, ſo as the quantity planted exceed not half a pole of ground. 12 *C.* 2. *c.* 34. *ſ.* 4. 22 & 23 *C.* 2. *c.* 26. *ſ.* 9.

Adulterating tobacco and ſnuff.

2. Every perſon who ſhall cut any walnut, hop, ſycomore, or other leaves, or any other herbs, plants, or materials (not being tobacco leaves or plants), or ſhall colour or cure any ſuch, to make the ſame reſemble tobacco; or ſhall ſell the ſame mixed or unmixed for tobacco, —— ſhall forfeit 5 *s.* a pound, half to the king (charges of the proſecution firſt deducted), and half with full coſts to him who ſhall ſue. 1 *G. ſt.* 2. *c.* 46. *ſ.* 1.

And every perſon who ſhall make, mix, or colour any ſnuff, with oker, umber, or other colouring, except water tinged with *Venetian* red only; or ſhall mix with ſnuff any fuſtick or yellow ebony, touchwood, or other wood, or any dirt, ſand, or ſmall tobacco ſifted from tobacco,—ſhall forfeit the ſame, and 3 *l.* for every pound weight, half to the king, and half to him that ſhall ſue. 1 *G. ſt.* 2. *c.* 46. *ſ.* 7. 5 *G. c.* 11. *ſ.* 22.

And all ſuch leaves and other materials, and all engines, utenſils, and tools for working the ſame, may be ſearched for and ſeized, by warrant of three commiſſioners of the treaſury or of the cuſtoms. 1 *G. ſt.* 2. *c.* 46. *ſ.* 3.

But no houſe or warehouſe ſhall be opened to ſearch for or ſeize the ſame, but at ſeaſonable hours, and not without a ſpecial warrant from two juſtices of the peace. *ſ.* 4.

And the ſaid materials or engines found and ſeized within ſix miles of any port, ſhall be brought to the next cuſtom-houſe warehouſe; and if at a greater diſtance from any port, ſhall be ſecured by order of two juſtices at the king's charge, till the cauſe of ſuch ſeizure ſhall be determined at the next, or at fartheſt the ſecond quarter ſeſſions after ſeizure; and the ſame, after condemnation or recovery by judgment of ſuch ſeſſions, ſhall be openly burned or deſtroyed by order of the ſame, at his majeſty's charge. *ſ.* 4.

And any ſervant employed in manufacturing or ſelling ſuch leaves or materials, ſhall on conviction before two juſtices, by oath of one witneſs, be committed to the common

mon gaol or houſe of correction, to be kept to hard labour not exceeding ſix months. *ſ.* 5.

Importing tobacco ſtalks.

3. If any tobacco ſtalks or ſtems, ſtript from the leaf, ſhall be imported; the ſame ſhall be forfeited, and burned, and the officer ſeizing the ſame ſhall be allowed 1 *d.* a pound; and every perſon who ſhall be aſſiſting or otherwiſe concerned in unſhipping the ſame, or to whoſe hands they ſhall knowingly come after unſhipping, ſhall forfeit treble value, together with the veſſels, bags, caſks, or other things wherein the ſame are contained, and the horſes, cattle, carts, and other carriages made uſe of in removing the ſame; half to the king, and half to ſuch officer of the cuſtoms who ſhall ſeize, inform, or ſue for the ſame. And the ſaid veſſels (not exceeding 15 tons), horſes, and other cattle, and carriages, may be proſecuted and determined before two juſtices reſiding near where the ſeizure was made. 12 *G.* *c.* 28. *ſ.* 13. 5 *G.* 3. *c.* 43. *ſ.* 4, 6. 8 *G.* *c.* 18. *ſ.* 16.

Carrying tobacco or ſnuff by land.

4. By the 24 *G.* 2. *c.* 41. and the 26 *G.* 2. *c.* 13. No tobacco or ſtalks, exceeding 24 *lb.* weight, nor any ſnuff exceeding 10 *lb.* ſhall be conveyed by land; unleſs, if it is *unmanufactured tobacco*, a certificate be firſt had from the officers at the port of importaion, together with the *importer's* oath thereto, that the duties were paid or ſecured at the importation, and when, and in what veſſel it was imported; and if the perſon applying for the certificate, be *purchaſer from the importer*, then on his oath, atteſting the marks and numbers of the identical hogſheads purchaſed, or out of which the tobacco was taken, and from whom purchaſed, and when; and if he be a *ſecend purchaſer*, then on his oath in like manner, provided that if it is an entire hogſhead, the name of the ſeller may be omitted in ſuch certificate.

And if it is *tobacco ſtalks or ſnuff, or other manufactured tobacco*, then not without a certificate and oath of the *importer* being firſt had, that ſuch ſtalks were ſtripped, or ſnuff or other manufactured tobacco, was made from one or more hogſheads, for which the duties were paid or ſecured at the importation; and if the perſon applying for the certificate be a *purchaſer*, he ſhall make oath that ſuch ſtalks were ſtripped, or ſuch ſnuff or other manufactured tobacco was made from one or more hogſheads, which had been delivered and received according to the directions of the ſaid act of the 24 *G.* 2.

And before any ſuch tobacco, or ſtalks, or ſnuff, ſhall be removed by land, the proprietor or his agent ſhall inſert on the back of the certificate, the package, with the marks and numbers ſet thereon, and the weight of each ſpecies of goods contained in each package, and the place from whence, and to which they are to be carried, and by whom, or the inn from whence, and to whom conſigned; and ſhall ſubſcribe his name, and make oath to the truth thereof; and the certificate ſhall expreſs the number of days it ſhall continue in force, and ſhall accompany the goods; and upon its arrival, the owner of the goods ſhall deliver it to the chief officer of the cuſtoms; and if there be none ſuch, then to the officers of exciſe, who ſhall examine the ſame with the goods, and if they agree, the goods may be taken away by the owner, and the officer ſhall thereupon enter ſuch certificate in a book for that purpoſe, and tranſmit an account thereof to the officer appointed by the treaſury for keeping ſuch accounts.

And if any tobacco, or ſtalks, exceeding 24 *lb.* or ſnuff exceeding 10 *lb.* ſhall be found removing by land from the port of importation, without having one or other of the certificates before directed; the ſame together with the packages, horſes, and carriages ſhall be forfeited; and the carrier ſhall beſides be committed to the county gaol for one month by one juſtice where the offence ſhall be committed, or the offender ſhall be found.

And any officer of the cuſtoms or exciſe may ſeize the ſame, and proſecute; and the proof that the ſame had been removed with a proper certificate, and that the duties had been paid or ſecured, ſhall be on the claimer, and not on the officer.

And no tobacco or ſtalks exceeding 24 *lb.* nor ſnuff exceeding 10 *lb.* which ſhall have been *carried coaſtwiſe*, from the port of importation to any other place, ſhall be removed from thence by land, without a certificate from the officers of the port to which they were carried coaſtwiſe, that it appears to them by the entries of the certificates in their books which came with the goods from the place of importation, that the duties were paid, and alſo in what veſſel they were brought, and when, and alſo that the perſon applying to them for the ſame, had made oath to the truth thereof: and before ſuch goods ſhall be removed by land, the proprietor or his agent ſhall inſert on the back of the certificate, the names of each package, with the marks and numbers thereon, and the weight of each ſpecies in

each package, and the place from and to which they are to be carried, and the name of the perſon to whom ſent, and ſhall ſubſcribe his name, and make oath to the truth thereof: And if any ſuch goods ſhall be found removing without ſuch certificate, or if it appear that ſuch certificate is forged; the goods, package, horſes and carriages ſhall be forfeited, and the carrier ſhall alſo forfeit 10 *l.* and be committed to the county gaol for one month, by one juſtice where the offence ſhall be committed, or the offender ſhall be found.

And no tobacco or ſtalks exceeding 24 *lb.* nor ſnuff exceeding 10 *lb.* ſhall be conveyed by land, unleſs the package be marked on the outſide, with the reſpective words, *tobacco*, *tobacco ſtalks*, or *ſnuff*, in letters not leſs than three inches in length; on pain of forfeiture of the ſame, with the package, and 1 *s.* a pound to be paid by the owner.

The ſaid penalties to be half to the king, and half to him that ſhall ſue in any of the courts at Weſtminſter.

And by the 5 *G.* 3. *c.* 43. the ſeiſure of the ſaid horſes and carriages may be proſecuted and determined before two juſtices reſiding near where the ſeizure was made. *ſ.* 6.

Torn.

Torn, what.

1. THE ſheriff's torn is the king's court of record, holden before the ſheriff, for redreſſing of common grievances within the county. 2 *Haw.* 55.

Meaning of the word.

2. And foraſmuch as the ſheriff did go in circuit twice every year, throughout every hundred within the county, it was called *tour*, or *tourn*, which ſignifieth a circuit or perambulation. 2 *Inſt.* 70.

When to be holden.

3. By the 31 *Ed.* 3. *ſt.* 1. *c.* 15. The ſheriff ſhall make his turn yearly, once within a month after *Eaſter*, and another time within a month after *Michaelmas*; and if he holds it in other manner, he ſhall loſe his turn for the

the time; that is, the court ſo holden for that time ſhall be void, and the ſheriff ſhall loſe the profit thereof. 2 *Inſt.* 71.

And he ſhall keep his turn no where but in due place and accuſtomed. 9 *H.* 3. *c.* 35.

4. Peers, clergymen, and tenants in ancient demeſne, are privileged from appearing at the torn. 52 *H.* 3. *c.* 10. 2 *Haw.* 57. Who are to appear at the torn.

Alſo they that have hundreds of their own ſhall not be bound to appear at the torn, but in the bailiwicks where they be dwelling, 52 *H.* 3. *c.* 10.

But all other perſons, being above the age of 12 years, are bound to attend at ſuch courts, in order to make inquiry of all common grievances, and alſo to give ſecurity to the publick for their good behaviour, by taking an oath to be faithful to the king, and to obſerve his laws, and alſo by incorporating themſelves into ſome free pledge or tithing which formerly ſignified a certain number of families living together in the ſame precinct, the maſters whereof were every one of them mutually bound for each other, and puniſhable for the default of any member of any ſuch family, in not appearing to anſwer for himſelf on any accuſation made againſt him. 2 *Haw.* 55.

5. No baliff, or other officer, ſhall return or impanel any perſon upon an inquiſition in the torn, but ſuch as be of good name and fame, and have 20 *s.* a year freehold within the ſhire, or 26 *s.* 8 *d.* cuſtomary or copyhold; on pain of 40 *s.* and the ſheriff other 40 *s.* half to the king, and half to him that will ſue; and an indictment otherwiſe taken ſhall be void. 1 *R.* 3. *c.* 4. Jurors in the torn.

But if the party except not to it upon his arraignment, he is concluded by that omiſſion. 2 *H. H.* 70.

And the jury ſhall put their ſeals to their inquiſitions. 13 *Ed.* 1. *c.* 13.

6. And indictments in the torn ſhall be by roll indented, one part to remain with the indictors, and the other with him that taketh the inqueſt. 1 *Ed.* 3. *c.* 17. Indictment to be indented.

7. It ſeems to be ſettled at this day, that a diſtreſs is incident of common right to every fine and amerciament in the torn; and that the offender's goods may be diſtrained in any lands within the precinct of the court, or in the highway; and that the goods diſtrained may be ſold. But the bailiff muſt have a ſpecial warrant to make diſtreſs. 2 *Haw.* 60, 61. Diſtreſs and ſale.

Or the fine may be recovered by action of debt. 2 *Haw.* 61.

Within what time offences are cognizable in the torn.

8. But no offence is cognizable in the torn, unleſs it ariſe ſince the holding of the laſt court. 2 *Haw.* 66.

Traverſe.

9. It ſeems to be agreed, that a preſentment in the torn, of any offence within the juriſdiction of the court; being neither capital, nor concerning any freehold, ſubjects the party to a fine or amerciament, without any traverſe. 2 *Haw.* 71.

Indictment to be certified to the ſeſſions.

10. By the *magna charta*, *c.* 17. The ſheriff is reſtrained in his torn from hearing and determining indictments of felonies; yet the ſheriffs did commonly make out proceſs or precepts in nature of a *capias* to arreſt the parties; but by the 1 *Ed.* 4. *c.* 2. their power of making out proceſs upon theſe indictments is taken away, as well in caſes of indictments of felony as other miſdemeanors within their cognizance, but they are to deliver all ſuch indictments and preſentments to the next ſeſſions, who are to make out proceſs thereupon, and hear and determine them. 2 *H. H.* 71.

And the eſtreats of the fines thereupon ſhall be introlled, and by indenture be delivered to the ſheriff, to the uſe of him that was ſheriff at the time of the indictment ſo taken in the torn as aforeſaid. 1 *Ed.* 4. *c.* 2.

Conſtables choſen in the torn.

11. The conſtables of common right are to be choſen and ſworn in the torn or leet. 2 *Haw.* 62.

Trades. See **Apprentices.**

Tranſportation.

For felonies within Clergy.

1. WHERE any perſon ſhall be convicted of grand or petit larcency, or any felonious ſtealing or taking of money or goods, within the benefit of clergy and liable only to burning in the hand or whipping (except perſons convicted for receiving or buying ſtolen goods knowing them to be ſtolen) the court before whom he ſhall be convicted or any ſubſequent court held with like authority,

authority, inſtead of ordering him to be burnt in the hand or whipt, may order him to be ſent as ſoon as conveniently may be, to ſome of his majeſty's plantations in *America*, for ſeven years; and ſhall have power to convey, transfer, and make over ſuch offender, by order of court, to the uſe of any perſon who ſhall contract for the performance of ſuch tranſportation, to him and his aſſigns, for ſeven years, 4 *G. c.* 11. *ſ.* 1. 6 *G. c.* 23. *ſ.* 1.

For felonies without benefit of clergy.

2. And where any offender ſhall be convicted of any crime, for which he is excluded the benefit of clergy, and the king ſhall be pleaſed to extend mercy to him, on condition of tranſportation to any part of *America*, and ſuch intention of mercy be ſignified by a principal ſecretary of ſtate, it ſhall be lawful for any court having proper authority, to allow ſuch offender the benefit of a pardon under the great ſeal, and to order the like transfer and conveyance, to any perſon (who will contract for the performance of ſuch tranſportation) and to his aſſigns, of ſuch offender, as alſo of any perſon convicted of receiving or buying ſtolen goods knowing them to be ſtolen, for the term of 14 years, in caſe ſuch condition of tranſportation be general, or elſe for ſuch other term as ſhall be made part of ſuch condition. 4 *G. c.* 11. *ſ.* 1.

Or, inſtead of waiting till the next aſſizes, the judge before whom the conviction ſhall be, may on ſuch intention of mercy ſignified to him by one of the principal ſecretaries of ſtate, order the offender to be immediately tranſported; and ſuch order ſhall be conſidered as an order made during the continuance of the aſſizes at which ſuch offender was condemned. 8 *G.* 3. *c.* 15.

Contract for tranſportation.

3. Every ſuch perſon, to whom any ſuch court or judge, ſhall order the offender to be transferred or conveyed, before he ſhall be delivered over to him or his aſſigns to be tranſported, ſhall contract with ſuch perſon as ſhall be ordered by the ſaid court or judge, and give ſufficient ſecurity to the ſatisfaction of ſuch court or judge, that he will tranſport, or cauſe to be tranſported effectually, ſuch offender, to ſuch of his majeſty's plantations in *America* as ſhall be ordered by the ſaid court or judge, and procure an authentic certificate from the governor, or the chief cuſtom houſe officer of the place (which they ſhall give without fee) of the landing of ſuch offender (death and caſualties of the ſea expected), and that the ſaid offender ſhall not be ſuffered to return from the ſaid place to any part of *Great Britain* or *Ireland*, by the

the wilful default of ſuch perſon ſo contracting, or his aſſigns. 4 *G. c.* 11. *ſ.* 3. 8 *G.* 3. *c.* 15.

Perſons impowered to contract.

4. The court or judge as aforeſaid may appoint, if they think fit, two or more juſtices where the offender ſhall be convicted, who ſhall have power to contract with any perſon for performance of the tranſportation; and may order the like ſecurity, and cauſe the felons to be delivered by the gaoler to the perſon contracting or his aſſigns; which contracts and ſecurity ſhall be certified by the juſtices who ſhall make and take the ſame, to the next court held with like authority for the place where the felon was convicted, to be filed and kept among the records of ſuch court. 6 *G. c.* 23. *ſ.* 2.

Bond for tranſportation.

5. And all ſecurities for tranſportation ſhall be by bond in the name of the clerk of the peace, who ſhall (by ſuch ſuit as the juſtices in ſeſſions ſhall direct) proſecute ſuch bond in his own name, and be paid ſuch coſts as he ſhall ſuſtain in ſuch ſuit for the penalty of ſuch bond, or otherwiſe howſoever by reaſon thereof, out of the publick ſtock by the treaſurer; and all money recovered on ſuch bond, ſhall be to the uſe of the county or place, and be paid to the treaſurer, and be part of the publick ſtock. 6 *G. c.* 23. *ſ.* 4.

Conveying to the port.

6. The perſon ſo contracting, and to whom any felon ſhall be delivered to be tranſported, or any perſon directed by the ſaid juſtices (impowered to contract as aforeſaid), or their aſſigns, may in ſuch manner as they think fit, carry and ſecure the felon, in and through any county, toward the ſea port; and if any perſon ſhall reſcue ſuch felon, or aſſiſt him in eſcaping, he ſhall be guilty of felony without benefit of clergy. 6 *G. c.* 23. *ſ.* 5.

Charges of tranſportation.

7. All charges in and about making the contracts, taking ſecurities, and conveying of felons in order to be tranſported, ſhall be born by the county or place for which the court was held; and the treaſurer ſhall, by order of the juſtices in ſeſſions, pay the ſame to ſuch perſons as ſhall be employed for the purpoſes aforeſaid. 6 *G. c.* 23. *ſ.* 3.

Eſcaping from on ſhipboard.

8. If any perſon ſhall aſſiſt any felon to attempt his eſcape, from any boat or veſſel carrying felons for tranſportation, he ſhall (being proſecuted within a year) be guilty of felony, and tranſported for ſeven years. 16 *G.* 2. *c.* 31. *ſ.* 3, 4.

Perſons tranſporting themſelves voluntarily.

9. Where any perſon of the age of 15, and under 21, ſhall be willing to be tranſported, and to enter into any ſervice in any of his majeſty's plantations in *America*, it

ſhall be lawful for any merchant or other, to contract with him for ſuch ſervice, not exceeding eight years; provided ſuch perſon come before the lord mayor or a juſtice of the peace, if the contract be in *London*, or before two juſtices if elſewhete, and before him or them acknowledge ſuch conſent, and ſign the contract in his or their preſence, and with his or their approbation. And then it ſhall be lawful for ſuch merchant or other, to tranſport ſuch perſon, and keep him according to the contract: Which ſaid contract, and approbation of ſuch magiſtrate or magiſtrates, with the tenor of ſuch contract, ſhall be certified by ſuch magiſtrate or magiſtrates to the next ſeſſions, to be regiſtred by the clerk of the peace without fee. 4 *G. c.* 11. *ſ.* 5.

Returning from tranſportation.

10. And if any offender ſo ordered to be tranſported, ſhall rerurn into *Great Britain* or *Ireland*, before the end of his term, he ſhall be liable to be puniſhed as a perſon attainted of felony without benefit of clergy, and execution ſhall be awarded againſt him accordingly. 4 *G. c.* 11. *ſ.* 2.

Being at large after order or agreement for tranſportation.

11. And by the 16 *G.* 2. *c.* 15. If any felon or other offender, ordered for tranſportation, or having agreed to tranſport himſelf on certain conditions either for life or any number of years, ſhall be afterwards at large in any part of *Great Britain*, without ſome lawful cauſe, before the expiration of the term; he ſhall be guilty of felony without benefit of clergy. *ſ.* 1.

And he may be tried at the aſſizes of the county or liberty where he ſhall be apprehended, or from whence he was ordered to be tranſported; and the clerk of aſſize, and clerk of the peace, where ſuch orders of tranſportation ſhall be made, ſhall, at the requeſt of the proſecutor, or any other in the king's behalf, certify a tranſcript briefly and in a few words, containing the effect and tenor of every indictment and conviction of ſuch felon, and of the *order and contract* for tranſportation, to the judges where he ſhall be indicted (not taking for the ſame above 2*s.* 6*d.* which certificate being produced in court ſhall be a ſufficient proof that ſuch perſon hath been convicted and ordered to be tranſported. 6 *G. c.* 23. *ſ.* 6, 7. 16 *G.* 2. *c.* 15. *ſ.* 2.

Order and contract] So it is in the record; But in Mr. *Hawkins's* edition of the ſtatutes, it is *order or contract*, which may induce a miſtake: for as the words *order or contract* do imply, that a perſon may be convicted upon a certificate either of the one, or of the other, it may happen in

in ſuch caſe that an innocent perſon ſhall be condemned; for if a *contract* for tranſportation ſhall be certified only, and not the *order* for tranſportation, it is poſſible there may never have been any ſuch order, and then ſuch contract, being without the party's own conſent or knowledge, and without any order to ſupport it, is void.

Reward for apprehending ſuch perſon.

12. And whoever ſhall diſcover, apprehend, and proſecute to conviction of felony without benefit of clergy, any ſuch offender, ſhall be intitled to a reward of 20 *l.* and ſhall have the like certificate, and like payments made, without fee as any perſons may be intitled to for the apprehending, proſecuting, and convicting of highwaymen. 16 *G.* 2. *c.* 15. *ſ.* 3.

Pardon.

13. But the king may at any time pardon and diſpence with the tranſportation, and allow of the offender's return, he paying to his proprietor ſuch ſum as ſhall be adjudged reaſonable by any two juſtices of the peace within the province where ſuch proprietor dwells. And where the offender ſhall have ſerved his term, ſuch ſervice ſhall have the effect of a pardon. 4 *G. c.* 11. *ſ.* 2.

Traverſe.

Traverſe, whence.

1. TRAVERSE took its name from the *French de traverſe*, which is no other than *de tranſverſe* in *Latin*, ſignifying, *on the other ſide*; becauſe as the indictment on the one ſide chargeth the party, ſo he on the other ſide cometh in to diſcharge himſelf. *Lamb.* 540.

Traverſe, what.

2. To traverſe an indictment then, is to take iſſue upon the chief matter thereof; which is the ſame as if one ſhall ſay, *to make contradiction*, or *to deny the point of the indictment*: As in a preſentment againſt a perſon for a highway overflowed with water, for default of ſcouring a ditch, which he, and they whoſe eſtate he hath in certain lands there, have uſed to ſcour or cleanſe; ſuch perſon may traverſe either the matter, to wit, that there is no highway there, or that the ditch is ſufficiently ſcoured; or otherwiſe he may traverſe the cauſe, to wit, that he hath not that land, or that he and they whoſe eſtate he hath have not uſed to ſcour the ditch. *Lamb.* 541.

3. And

3. And foraſmuch as in the record of one traverſe, there is at once diſcovered, the ſtyle of the ſeſſions, the indictment, the proceſs to anſwer, the traverſe itſelf, the verdict, and judgment thereupon, the proceſs of execution, the yielding of the parties, and the aſſeſſment of their fines, ſo that it alone may ſerve inſtead of all, it is judged requiſite to inſert the ſame as follows: Form of traverſe.

Somerſet. HERETOFORE, *to wit, at the ſeſſions of the peace at* Bridgewater *in the county oforeſaid, on the* Tueſday *next before the feaſt of St.* Matthew *the apoſtle, in the* ——— *year of the reign of* ——— *by the grace of God, of* Great Britain, France, *and* Ireland, *king, defender of the faith, and ſo forth, before* J. P. *and* K. P. *eſquires, and others their aſſociates, juſtices of our ſaid lord the king, aſſigned to keep the peace in the county aforeſaid, as alſo to hear and determine divers felonies, treſpaſſes, and other miſdemeanors in the ſame county committed, by the oath of twelve jurors it is preſented, that* John Long, *of* ——— R. M. *of* ——— *and* T. L. *of* ——— *with divers others unknown, evil doers and diſturbers of the peace of our ſaid lord the king, in a warlike manner arrayed, joined and aſſembled, on the* ——— *day of* ——— *in the night of the ſame day, in the year aforeſaid, with force and arms, to wit, with ſwords, ſtaves, clubs, guns, and other arms, as well offenſive as defenſive, at* ——— *the cloſe of one* W. Willet, *(called* B.*) unlawfully, rioutouſly, and routouſly broke and entered, and eight waggon loads of hay, to the value of* ——— *then and there being, of the goods and chattels of the ſaid* W. W. *then and there unjuſtly and unlawfully took and carried away, againſt the peace of our ſaid lord the king, and againſt the form of the ſtatute in that caſe made and provided: Whereupon it was commanded to the ſheriff, that he ſhould not omit,* &c. *but cauſe them to come to anſwer. And afterwards, to wit, on the* Tueſday *aforeſaid, next before the faſt of St.* Matthew *the apoſtle, in the year aforeſaid, before the aforeſaid juſtices, came the aforeſaid* J. L. R. M. *and* T. L. *in their proper perſons, and having had the hearing of the indictment aforeſaid, ſeverally ſay, that they are thereof not guilty, and of this they put themſelves upon the country; and* Adam Martin, *who for our lord the king in this behalf proſecutes, in like manner,* &c. *Therefore let there come thereupon a jury before the juſtices of our ſaid lord the king, aſſigned to keep the peace in the county aforeſaid, and alſo to hear and determine,* &c. *at the ſeſſions of the peace at* Welles, *&c. on the* Tueſday *next after the* Epiphany *of our lord then next to be holden, And who,* &c. *To recognize,* &c. *Becauſe as well,* &c.

(Style of the ſeſſions.)

(The indictment.)

(Proceſs to anſwer.)

(Traverſe.)

(Jury)

The

(Day given.) *The ſame day is given as well to the aforeſaid* A. M. *who proſecutes*, &c. *as to the aforeſaid* J. L. R. M. *and* T. L. &c. *To which ſeſſions of the peace holden at* W. *aforeſaid in the county aforeſaid, on the aforeſaid day*, &c. *before*——*and their aſſociates, juſtices of our ſaid lord the king, aſſigned to keep the peace in the county aforeſaid, and alſo to hear and determine divers felonies, treſpaſſes, and other miſdemeanors in the ſame county committed, came as well the aforeſaid* A. M. *who proſecutes*, &c. *as the aforeſaid* J. L. R. M. *and* T. L. *in their proper perſons.*

(Verdict.) *And the jurors aforeſaid, by the ſheriff of the county aforeſaid for this impanelled, and demanded, to wit,* A. B. C. D. &c. *likewiſe did come, who to ſay the truth concerning the premiſſes being tried and ſworn, ſay upon their oath, that the aforeſaid* J. L. R. M. *and* T. L. *are guilty, and every of them is guilty, of the treſpaſs, contempt, and riot aforeſaid, in the indictment aforeſaid above ſpecified, in manner and form as againſt them*

(Judgement.) *is above ſuppoſed. Therefore it is conſidered by the court, that the aforeſaid* J. L. R. M. *and* T. L. *be taken to ſatisfy our lord the king of their fines, by occaſion of the treſpaſs, contempt,*

(Proceſs of execution.) *and riot aforeſaid. Which* J. L. R. M. *and* T. L. *then and there preſent in court, prayed that they to a fine with our ſaid lord the king, by the occaſion aforeſaid, may be admitted; and therefore they put themſelves ſeverally upon the mercy of our lord*

(Fine aſſeſſed.) *the king. And the fine of the ſame* J. L. *by the juſtices aforeſaid is aſſeſſed at* 3 l. 6 s. 8 d. *and the fine of the ſame* R. M. *is aſſeſſed at* 20 s. *and the fine of the ſame* T. L. *is aſſeſſed at* 5 l. *of good and lawful money of* Great Britain, *to the uſe and behoof of our ſaid lord the king.* Lamb. 543.

Notice of trial. 4. Every defendant indicted for a miſdemeanor, ſhould give full eight days notice of trial to the proſecutor, before the aſſizes, if the trial is to be there; if at the ſeſſions, it is uſual to give two or three days notice. *Cr. Circ.* 20, 48.

Treaſon.

Meaning of the word treaſon. TREASON, according to Lord *Coke*, is derived from *trahir*, to betray; and trahiſon, by contraction *treaſon*, is the betraying itſelf. 3 *Inſt.* 4.

Treaſon,

Treaſon, generally ſpoken, is intended, not of petit treaſon, but of high treaſon only. 1 *H. H.* 316.

2. Notwithſtanding that treaſon and miſpriſion of treaſon are not within the letter of the commiſſion of the peace, yet inaſmuch as they are againſt the peace of the king and of the realm, any juſtice of the peace may, either upon his own knowledge, or the complaint of others, cauſe any perſon to be apprehended for any ſuch offence. And ſuch juſtice may take the examination of the perſon ſo apprehended, and the information of all thoſe who can give any material evidence againſt him, and put the ſame in writing; and alſo bind over ſuch who are able to give any ſuch evidence, to the king's bench, or gaol delivery, and certify his proceedings to ſuch court. 2 *Haw.* 39. *Hal. Pl.* 168. 1 *H. H.* 372. Power of juſtices of the peace therein.

3. And having committed the offender (for he is by no means bailable by juſtices of the peace, 3 *Ed.* 1. *c.* 15. 2 *Haw.* 99,) it may be adviſeable for him to ſend an account immediately, of all the particulars, to a ſecretary of ſtate. Bail.

4. By the ſtatute of the 25 *Ed.* 3. *ſt.* 5. *c.* 2. (which lord *Hale* calls a *ſacred* act; and lord *Coke* an *excellent* act, and the king who made it a *bleſſed* king, and the parliament a *bleſſed* parliament;) All treaſons which had been uncertain before, were ſettled. Which act by the 1 *Mar. ſeſſ.* 1. *c.* 1. is reinforced, and again made the only ſtandard of treaſon; and all ſtatutes, between the ſaid ſtatutes of the 25 *Ed.* 3. and 1 *Mar.* which made any offences high or petit treaſon, or miſpriſion of treaſon, are abrogated; ſo that no offence is at this day to be eſteemed high treaſon, unleſs it be either declared to be ſuch by the ſaid ſtatute of the 25 *Ed.* 3. or made ſuch by ſome ſtatute ſince the 1 *Mar.* Treaſon by the 25 Ed. 3.

And therefore I ſhall firſt conſider ſuch offences as are high treaſon within the ſaid ſtatute of the 25 *Ed.* 3. and then ſuch as are made treaſon by ſtatutes ſubſequent to the ſaid ſtatute of the 1 *Mar.*

The words of the ſtatute of the 25 *Ed.* 3. as to this matter, are as follows:

Whereas divers opinions have been before this time, in what caſe treaſon ſhall be laid, and in what not; the king, at the requeſt of the lords and commons, hath made a declaration in the manner as hereafter followeth; that is to ſay, When a man doth compaſs or imagine the death of our lord the king, or of our

lady his queen, or of their eldeſt ſon and heir ; or if a man do violate the king's companion (that is his wife, 3 *Inſt.* 9) *or the king's eldeſt daughter unmarried, or the wife of the king's eldeſt ſon and heir ; or if a man do levy war againſt our lord the king in his realm, or be adherent to the king's enemies in his realm, giving to them aid and comfort in the realm, or elſewhere ; and thereof he probably* (proveablement, proveably) *attainted of open deed, by the people of their condition. And if a man counterfeit the king's great or privy ſeal, or his money ; and if a man bring falſe money into the realm, counterfeit to the money of* England, *knowing the money to be falſe ; and if a man ſlay the chancellor, treaſurer or the king's juſtices of the one bench or the other juſtices in eyre, or juſtices of aſſize, and all other juſtices aſſigned to hear and determine, being in their places, doing their offices.*

And by the ſtatute of the 1 *Mar. ſeſſ.* 1. *c.* 1. (which lord *Hale* calls another excellent law) *No act, deed, or offence being by act of parliament made treaſon, by words, writing, ciphering, deeds, or otherwiſe whatſoever, ſhall be adjudged to be treaſon, but only ſuch as be declared by the ſaid ſtatute of the* 25 Ed. 3. And this (he ſays) at one blow laid flat all the numerous treaſons at any time enacted ſince the 25 *Ed.* 3. 1 H. H. 308.

Of open deed] Lord *Coke* (3 *Inſt.* 14, 140.) ſeems to be of opinion, upon the ſaid act of the 25 *Ed.* 3. that bare *words* are not a ſufficient *overt act*, or *open deed*, whereby to convict a perſon of treaſon : but that they are miſpriſion of treaſon only. So alſo lord *Hale* (1 *H. H.* 111, 118. and elſewhere throughout) ſeemeth to think, that words, unleſs put into writing, are not regularly an overt act. But Mr. *Hawkins* (1 *Haw.* 39) argues the contrary, and amongſt other reaſons for his opinion, he obſerves, that to charge a man with ſpeaking treaſon is unqueſtionably actionable, which could not be, if no words could amount to treaſon : alſo, that as in caſe of felony, he who by command or perſuaſion induceth another to commit felony, is an acceſſary in felony, ſo he who does the ſame in treaſon, is a principal traytor (there being no acceſſaries in treaſon, but all being principals) ; and yet ſuch perſon doth no act but by words.

And it has been the conſtant practice, ever ſince the revolution at leaſt, where a perſon by treaſonable diſcourſes hath manifeſted a deſign to murder or depoſe the king, to convict him upon ſuch evidence. And in *Lowick*'s caſe,

Holt,

Holt Ch. J. declared, that *expreſs words* were not neceſſary to convict a man of high treaſon; but if from the tenor of his diſcourſe the jury is ſatisfied he was engaged in a deſign againſt the king's life, this is ſufficient to convict the priſoner. *Read.* Treaſ. 146.

5. Offences made treaſon ſince the 1 *Mar.* are as follows: Treaſons ſince the 1 Mar.

(1) With regard to the *pretender* — By the 6 *An. c.* 7. If any perſon ſhall by writing or printing affirm, that the pretender hath any right to the crown, or any other perſon otherwiſe than according to act of parliament, he ſhall be guilty of high treaſon. And if any perſon ſhall by preaching, teaching, or adviſed ſpeaking affirm the ſame, he ſhall incur a præmunire.

But no perſon ſhall be proſecuted for words, unleſs oath be made thereof before a juſtice in three days; and the proſecution be within three months; and the conviction on the oath of two witneſſes.

And by the 13 *W. c.* 3. If any perſon ſhall hold any correſpondence with the pretender, or any perſon employed by him, or ſhall remit any money to his uſe, he ſhall be guilty of high treaſon. And by the 17 *G.* 2. *c.* 39. This is extended to the pretender's ſon.

(2) Offences in relation to the coin, are made treaſon by many ſtatutes; which are treated of in title Coin.

(3) Alſo there are many offences made treaſon, with regard to the popiſh uſurped juriſdiction; which are treated of under title Popery.

6. In high treaſon, as hath been ſaid before, there are no acceſſaries, but all are principals; and therefore whatſoever act or conſent will make a man acceſſary to a felony before the act done, the ſame will make him a principal in caſe of high treaſon. 3 *Inſt.* 9. 21. Acceſſaries in high treaſon.

7. By the 7 *W. c.* 3. No perſon ſhall be proſecuted for high treaſon but within three years after the offence committed; except in the caſe of deſigning to aſſaſſinate the king's perſon. Proſecution to be in three years.

8. And by the 31 *C.* 2. *c.* 2. Perſons committed for high treaſon, ſhall be indicted the next term, or next aſſize; otherwiſe they ſhall be let to bail, unleſs it appear to the court, upon oath, that the witneſſes for the king could not be produced in that time; and in ſuch caſe they ſhall be indicted the ſecond term or aſſize, or elſe diſcharged. Trial to be the next term.

Copy of the indictment.

9. Perſons indicted for high treaſon whereby corruption of blood ſhall be made, or for miſpriſion of ſuch treaſon (except for counterfeiting the coin, the great ſeal, privy ſeal, privy ſignet or ſign manual) ſhall have a copy of the indictment (but not the names of the witneſſes) delivered to them five days before trial. 7 *W.* *c.* 3.

Copy of the panel.

10. And they ſhall have copies of the panel of the jurors delivered to them, two days before trial. 7 *W.* *c.* 3.

Proceſs for witneſſes.

11. And ſhall have proceſs of court to compel their witneſſes to appear. 7 *W.* *c.* 3.

Liſt of the witneſſes.

12. And moreover, after the death of the perſon pretending to be king of *England* by the name of *James* the third, when a perſon is indicted for high treaſon, or miſpriſion of treaſon, both a copy of the indictment, and liſts of the jurors, and alſo of the witneſſes, ſhall be delivered to the party indicted, ten days before the trial. 7 *An.* *c.* 21. *ſ.* 11.

But this ſhall not extend to any indictment of high treaſon for counterfeiting the coin, the great ſeal, privy ſignet, or ſign manual. 6 *G.* 3. *c.* 53. *ſ.* 3.

Counſel.

13. And ſuch perſon ſhall have two ſuch counſel as they ſhall deſire aſſigned them by the court, who ſhall have acceſs to them at reaſonable times. 7 *W.* *c.* 3.

Likewiſe perſons impeached by the houſe of commons, of high treaſon, whereby corruption of blood ſhall be made, or for miſpriſion thereof, ſhall be admitted to make their full defence by two counſel, who ſhall be aſſigned for that purpoſe, in like manner as upon indictments and other proſecutions. 20 *G.* 2. *c.* 30.

Witneſſes ſworn.

14. And they ſhall be allowed to make their defence by witneſſes on oath. 7 *W.* *c.* 3.

Two witneſſes.

15. And they ſhall not be attainted but on the oath of two witneſſes, either both of them to the ſame overt act, or one of them to one, and the other of them to another overt act of the ſame treaſon; unleſs they ſhall confeſs, or ſtand mute, or refuſe to plead, or challenge peremptorily above 35 of the jury. 7 *W.* *c.* 3.

Judgment.

16. The judgment for high treaſon (not relating to the coin) is, That he ſhall be carried back to the place from whence he came, and from thence to be drawn to the place of execution, and be there hanged by the neck, and cut down alive, and that his entrails be taken out, and burnt before his face, and his head cut off, and his body divided into four quarters, and his head and quarters diſpoſed of at the king's pleaſure. 2 *Haw.* 443.

The

The judgment of a woman for high treaſon, is to be drawn and burnt. 3 *Inſt.* 211.

17. In the ſaid judgment is implied forfeiture of lands and goods to the king, loſs of dower, and corruption of blood. 3 *Inſt.* 211. Forfeiture.

But after the death of the pretender (and of his eldeſt and every other ſon, 17 *G.* 2. *c.* 39. *ſ.* 3.) no attainder for treaſon ſhall diſinherit or prejudice any heir or other perſon, other than the offender during his life. 7 *Ann.* *c.* 21. *ſ.* 10.

Petit treaſon.

1. *Moreover, there is another manner of treaſon, when a ſervant ſlayeth his maſter, or a wife her huſband; or when a man ſecular or religious ſlayeth his prelate to whom he oweth faith and obedience.* 25 Ed. 3. ſt. 5. *c.* 2. Petit treaſon, what.

High treaſon is againſt the king, petit treaſon againſt the ſubjects. 3 *Inſt.* 20.

2. No perſon ſhall be convicted of petit treaſon, but on the oath of two witneſſes, or confeſſion. 1 *Ed.* 6. *c.* 12. *ſ.* 22. Two witneſſes.

3. The judgment againſt a man for petit treaſon is, that he ſhall be drawn to the place of execution, and there hanged by the neck till he be dead: The judgment againſt a woman is, that ſhe ſhall be drawn to the place of execution, and there burnt. 2 *Haw.* 444. Judgment.

4. The conſequence of attainder, is, forfeiture of lands (to the lord of the fee), and of goods; loſs of dower; and corruption of blood. 2 *Haw. c.* 49. Forfeiture.

5. Although there can be no acceſſaries in high treaſon, yet in petit treaſon there may be acceſſaries both before and after. 3 *Inſt.* 21. Acceſſary.

And acceſſaries before the fact are ouſted of clergy, by ſeveral ſtatutes; but acceſſaries after the fact have their clergy in all caſes of petit treaſon, for no ſtatute takes it from them. 2 *H. H.* 342.

Miſpriſion of treaſon.

Miſpriſion, what.

1. Miſpriſion cometh of the *French* word *meſpris*, which properly ſignifieth neglect or contempt: And miſpriſion of treaſon, in legal underſtanding, ſignifieth, when one knoweth of any treaſon, though no party or conſenter to it, yet conceals it, and doth not reveal it in convenient time. 3 *Inſt.* 36. 1 *H. H.* 371.

Judgment.

2. The judgment of miſpriſion of treaſon is, to be impriſoned during life, to forfeit all his goods for ever, and the profits of his lands during life. 3 *Inſt.* 36.

Caution.

3. Every man therefore that knoweth a treaſon, ought with all ſpeed to reveal it to the king, his privy council, or other magiſtrate. *H. Pl.* 127.

Miſpriſion of petit treaſon.

4. But it ſeemeth that miſpriſion of petit treaſon is not ſubject to the judgment of miſpriſion of high treaſon, but only is puniſhable by fine and impriſonment, as in the caſe of miſpriſion of felony. 1 *H. H.* 375.

Treaſure found.

Treaſure trove, what.

1. TREASURE trove, or treaſure found, is *where any gold or ſilver, in coin, plate, or bullion, hath been of ancient time hidden, whereſoever it be found, whereof no perſon can prove any property, it doth belong to the king or to ſome other by the king's grant or preſcription.* 3 Inſt. 132.

Gold or ſilver] For if it be of any other metal, it is no treaſure; and if it be no treaſure, it belongs not to the king, for it muſt be *treaſure* trove. 3 *Inſt.* 132.

Whereſoever it be found] Whether it be of ancient time hidden in the ground, or in the roof of walls, or other part of a caſtle, houſe, building, ruins, or elſewhere, ſo as the owner cannot be known. 3 *Inſt.* 132.

Belong to the king] The reaſon whereof is a rule of the common law, that ſuch goods whereof no perſon can claim any

any property, belong to the king; as wrecks, ſtrays, and the like. 3 *Inſt.* 132.

2. Larcency cannot be committed of ſuch things whereof no man hath any determinate property, though the things themſelves are capeble of property, as of treaſure trove, or wreck till ſeized; though he that hath them in point of franchiſe, may have a ſpecial action againſt him that takes them. 1 *H. H.* 510. Taking treaſure trove, not felony.

3. The puniſhment for concealment of treaſure trove, is by fine and impriſonment. 3 *Inſt.* 133. But finable.

4. And it belongeth to the coroner to inquire thereof. 3 *Inſt.* 133. The coroner may inquire thereof.

Concerning which it is enacted by the 4 Ed. 1. ſt. 2. that *a coroner being certified by the king's bailiffs, or other honeſt men of the country, ſhall go to the places where treaſure is ſaid to be found.* And it is further enacted in the ſame ſtatute, that *the coroner ought to inquire of treaſure that is found, who were the finders, and likewiſe who is ſuſpected thereof: and that may be well perceived, where one liveth riotouſly, haunting taverns, and hath done ſo of long time; hereupon he may be attached for this ſuſpicion, by* 4, *or* 6, *or more pledges, if he may be found.*

5. Alſo it ſeems to be agreed, that all ſeizures of treaſure trove, belonging to the king, may be inquired of in the ſheriff's torn: But it ſeems queſtionable, whether a preſcription in a court leet to inquire of ſuch ſeizure belonging to the lord of it, being a ſubject, be good or not, ſince it is againſt the general rule of the law, for the leet to take recognizance of treſpaſſes done to the private damage of the lord, becauſe that would make him his own judge. 2 *Haw.* 67. Alſo the ſheriff in his torn.

Treaſurer.

Treaſurer how choſen.

1. BY the 12 *G.* 2. *c.* 29. the treaſurers ſhall be perſons reſident in the county or diviſion, and ſhall be appointed by the juſtices at their general or quarter ſeſſions; firſt giving ſufficient ſecurity to be accountable for the money which ſhall be paid to them in purſuance of this act (for levying of county rates), and to pay ſuch ſums as ſhall be ordered by the juſtices in ſeſſions, and for the due and faithful execution of the truſts repoſed in them. *ſ.* 6.

Continuance in his office; and his ſalary.

2. And they may continue the treaſurer from time to time in his office, and remove him at their pleaſure, and appoint another in his place; and may allow him a ſalary not exceeding 20 *l.* a year, to be paid out of the county rates. 12 *G.* 2. *c.* 29. *ſ.* 11.

His election to be certified into the king's bench.

3. And that the treaſurers may be the better amenable to the court of king's bench, with regard to the payment of the money for relief of the priſoners of the *King's Bench* and *Marſhalſea* priſons, Every perſon who ſhall be elected treaſurer of any county, ſhall in 30 days after his election tranſmit his name and place of abode to the clerk of the crown in the court of king's bench, to be by him entered or regiſtred, for which entry no fee ſhall be taken: And if ſuch treaſurer ſhall neglect or refuſe ſo to do, then upon the report of the ſaid clerk of the crown, the ſaid court may make a rule upon him, requiring his performance; which ſhall be inforced as other rules of the ſaid court, at the charge of ſuch treaſurer. 11 *G.* 2. *c.* 20.

His account.

4. And the treaſurer ſhall keep books of entries of the ſeveral ſums by him received and paid; and ſhall deliver in a true and exact account upon oath if required of his receipts and diſburſements, diſtinguiſhing the particular uſes to which the ſeveral ſums have been applied, to the juſtices at every general or quarter ſeſſions, and ſhall lay before them the proper vouchers for the ſame: Which accounts and vouchers ſhall be depoſited with the clerk of the peace, to be kept amongſt the records, to be inſpected by any of the juſtices without fee. 12 *G.* 2. *c.* 29. *ſ.* 7, 8.

5. And

5. And the diſcharge of the juſtices, by their order at their general or quarter ſeſſions, ſhall be a ſufficient releaſe and diſcharge to ſuch treaſurer. 12 *G.* 2. *c.* 29. *ſ.* 9. And diſcharge.

Trees. See **Wood.**

Treſpaſs. See **Juſtice of the peace.**

Trial. See **Jury, Seſſions.**

Turnips.

IF any perſon ſhall ſteal and take away, or maliciouſly pull up and deſtroy any turnips growing, or being in any grounds belonging to any perſon, and be convicted thereof (within 30 days) by confeſſion, or oath of one witneſs, before one juſtice; he ſhall for the firſt offence pay to the owner ſuch ſatisfaction for the damage, and within ſuch time, as the juſtice ſhall appoint; and ſhall alſo pay down upon conviction, to the overſeers for the uſe of the poor, ſuch ſum not exceeding 10*s.* as the juſtice ſhall think fit; and if he ſhall not make ſuch recompence and payment, the juſtice may either commit him to the houſe of correction for any time not exceeding one month, or order him to be whipt by the conſtable: And being convicted of a ſecond offence, he ſhall be committed to the houſe of correction for three months. 23 *G.* 2. *c.* 26. *ſ.* 13, 14.

Turnpikes. See **Highways.**

Vagrants.

THIS title conſiſteth chiefly of the ſtatute of 17 *G.* 2. *c.* 5. commonly called the vagrant act; but in the progreſs thereof, the other ſtatutes relating to vagrants are inſerted in the places where they properly fall in.

I. Idle and diſorderly perſons.
II. Rogues and vagabonds.
III. Incorrigible rogues.
IV. Apprehending.
V. Reward for apprehending.
VI. Penalty for not apprehending.
VII. Privy ſearch.
VIII. Examination.
IX. Whipping or impriſonment.
X. Further puniſhment.
XI. Conveying.
XII. What to be done with at the place to which they are ſent.
XIII. Scottiſh *vagrants.*
XIV. Iriſh *vagrants.*
XV. Lunatick vagrants.
XVI. Penalty of lodging vagrants.
XVII. Children born in vagrancy.
XVIII. General penalty for hindering the execution of the vagrant act.
XIX. Charges of maintaining and conveying vagrants.
XX. Appeal.
XXI. Treble coſts.
XXII. Exception of ſpecial franchiſes.

I. Idle and diſorderly perſons.

By the 7 *J.* *c.* 4. Idle and diſorderly perſons ſhall be ſent to the houſe of correction; and by the 17 *G.* 2. *c.* 5. idle and diſorderly perſons are thus deſcribed: (1) All perſons who threaten to run away, and leave their wives or children

dren to the pariſh. (2) All perſons who ſhall unlawfully return to the pariſh or place from whence they have been legally removed by order of two juſtices, without bringing a certificate from the pariſh or place whereunto they belong. (3) All perſons who not having wherewith to maintain themſelves, live idle without employment, and refuſe to work for the uſual and common wages given to other labourers in the like work, in the pariſhes or places where they are. (4) All perſons going about from door to door, or placing themſelves in ſtreets, highways, or paſſages, to beg or gather alms in the pariſhes or places where they dwell.———All theſe ſhall be deemed idle and diſorderly perſons. And it ſhall be lawful for one juſtice to commit ſuch offenders (being thereof convicted before him, by his own view, confeſſion, or oath of one witneſs) to the houſe of correction, to be kept to hard labour not exceeding one month. And any perſon may apprehend, and carry before a juſtice, any ſuch perſons going about from door to door, or placing themſelves in ſtreets, highways, or paſſages, to beg alms in the pariſhes or places where they dwell; and if they ſhall reſiſt, or eſcape from the perſon apprehending them, they ſhall be puniſhed as rogues and vagabonds. And the ſaid juſtice, by warrant under his hand and ſeal, may order (A) any overſeer where ſuch offender ſhall be apprehended, to pay 5 *s.* to any perſon in ſuch pariſh or place ſo apprehending them, for every offender ſo apprehended; to be allowed in his accounts, on producing the juſtice's order, and the perſon's receipt to whom it was paid: And if the overſeer ſhall neglect or refuſe to pay the ſame, the ſaid juſtice on oath thereof, may by his warrant order the ſame to be levied by diſtreſs and ſale of his goods, and in ſuch caſe he ſhall not be allowed the ſame in his accounts. *ſ.* 1.

Note; This is another, and a quite different reward, from that which is given hereafter for apprehending rogues and vagabonds; the latter being 10 *s.* and this but 5 *s.* the latter paid by the county, but this paid by the pariſh, as a puniſhment for ſuffering their poor to beg, although within their own pariſh; for if they beg out of the pariſh, they incur a further degree of guilt, becoming thereby rogues and vagabonds.

II. Rogues and vagabonds.

An infant under the age of ſeven years, ſhall not be ſaid to be a rogue and vagabond; but ſhall be removed to its place of

of ſettlement, as other poor perſons not vagrants. *Black.* 276.

But perſons who ſhall be deemed rogues and vagabonds, are by the 17 *G.* 2. *c.* 5. theſe that follow:

(1) All perſons going about as patent gatherers, or gatherers of alms, under pretences of loſs by fire, or other caſualty.

(2) Perſons going about as collectors for priſons, *gaols*, or hoſpitals.

(3) Fencers.

(4) Bearwards.

(5) Common players of interludes, and all perſons who ſhall for hire, gain, or reward, act, repreſent, or perform, or cauſe to be acted, repreſented, or performed, any interlude, tragedy, comedy, opera, play, farce, or other entertainment of the ſtage, or any part therein, not being authorized by law.

(6) Minſtrels.

But this ſhall not prejudice the heirs or aſſigns of *John Dutton* of *Dutton*, late of the county of *Cheſter*, eſquire, their heirs or aſſigns, concerning the liberty, privilege, or inheritance, which they, their heirs or aſſigns now lawfully uſe, or ought to uſe within the county of *Cheſter*, by reaſon of any ancient charters of any kings of this land, or by reaſon of any preſcription, or lawful uſage, or title whatſoever.

For the underſtanding of which clauſe, we muſt go back ſo far as the reign of king *Richard* the firſt: *Randal Blundeville*, earl of *Cheſter*, towards the latter end of that king's reign, being ſuddenly beſieged by the *Welch* in the caſtle of *Ruthelent* in *Flintſhire*, ſent to his conſtable of *Cheſhire*, one *Roger Lacy*, (for his fierceneſs ſirnamed *Hell*), to haſten with what force he could to his relief. It happened to be on *Midſummer-day*, and a great fair then held at *Cheſter*. Whereupon *Roger* immediately got together a great lawleſs mob of fidlers, players, coblers, and the like, and marched inſtantly towards the earl; and the *Welch* perceiving a great multitude approaching, raiſed the ſiege and fled.

The earl being thus freed, comes back with his conſtable to *Cheſter*; and in memory of this ſervice, by a charter grants to *Roger Lacy* and his heirs, power over all the fidlers, letchers, whores, and coblers in *Cheſter*.

About the latter end of the reign of king *John*, or beginning of king *Hen.* II. *Roger Lacy* being dead, his ſon *John Lacy* by deed granted to one *Hugh Dutton* his ſteward, and to his heirs, the rule and authority over all the letchers

letchers and whores in the county, in theſe words; *Sciant præſentes et futuri, quod ego* Johannes *conſtabularius* Ceſtriæ, *dedi et conceſſi, et hac præſenti charta mea confirmavi,* Hugoni de Dutton *et hæredibus ſuis, magiſtratum omnium lecatorum et meretricum totius* Ceſterſhiriæ, *ſicut liberius illum magiſtratum teneo de comite. Salvo jure meo mihi et hæredibus meis.*

In the 14 *H.* 7. a *quo warranto* was brought againſt *Lawrence Dutton* of *Dutton*, eſquire, why he claimed all the minſtrels of *Cheſhire* and in the city of *Cheſter*, to meet before him at *Cheſter* yearly, at the feaſt of *St. John Baptiſt*, and to give unto him at the ſaid feaſt 4½ *d.* and why he claimed from every whore in *Cheſhire* and in the city of *Cheſter*, *officium ſuum exercente*, 4 *d.* to be paid yearly at the feaſt aforeſaid. To which he pleaded preſcription. *Sir Peter Leyceſter's Antiq. Cheſh.* 141, 142, 251.

This ſame exception, as it is here, was in the vagrant acts of the 14 *Eliz. c.* 5, and 39 *Eliz. c.* 4. (now repealed.)

And in the 43 *El. c.* 3 which continued the ſaid act of the 39 *El.* the above clauſe was continued only for one year, except before the end of the ſaid year, the ſaid *John Dutton* or his heirs, ſhould procure the lords chief juſtices and lord chief baron, or two of them, on hearing his allegations and proofs, to make certificate into the chancery, to be there inrolled, that the ſaid *John Dutton*, or his heirs, ought lawfully (if no ſtatute againſt rogues or beggars had been made) by charter, tenure, or preſcription, to have ſuch liberty of licenſing of minſtrels, as he claimeth and uſeth.

And in the 1 *J. c.* 25. the ſame clauſe was continued without limitation; ſo that it is probable ſuch proof had then been made as is abovementioned.

And under the aforeſaid grant, by ancient cuſtom, the heirs of *Dutton* to this day do claim and exerciſe a privilege and authority over all the common fidlers and minſtrels in *Cheſter*, and all *Cheſhire*; and in memory thereof, keep a yearly court at *Cheſter* on *Midſummer-day*, being *Cheſter* fair, and in a ſolemn manner ride attended through the city to St. *John Baptiſt*'s church, with all the fidlers of the county playing before the lord of *Dutton*, and then at the court renew their licences yearly; and none ought to uſe the trade or employment of a minſtrel or fidler, either within the city or county, but by an order and licence of that court. 1 *Dugd. Monaſt.* 860.

(7) Jugglers.

(8) All perſons pretending to be gypſies, or wandring in the habit or form of *Egyptians*.

And

And by the 1 & 2 P. & M. *c.* 4. If any perſon ſhall bring into the realm any perſons calling themſelves, or commonly called *Egyptians*; he ſhall forfeit 40*l.* half to the king, and half to him that ſhall ſue. And if any of the ſaid perſons called *Egyptians*, ſo brought into the realm, ſhall continue within the ſame for one month, he ſhall (on conviction in the county where he was apprehended) be adjudged guilty of felony without benefit of clergy, and ſhall not be tried by a jury *per medietatem linguæ*. But this not to extend to any child not above 13 years of age; nor to charge any perſon as acceſſary to the ſaid felony.

And by the 5 *El. c.* 20. Every perſon (though not brought from beyond ſea) who ſhall be found in any company of vagabonds, commonly called, or calling themſelves *Egyptians*, or counterfeiting, transforming, or diſguiſing themſelves by their apparel, ſpeech, or other behaviour like unto them, and ſhall continue in the ſame at one time, or at ſeveral times, by the ſpace of one month, ſhall on conviction in the county where he was apprehended, be adjudged guilty of felony without benefit of clergy, and ſhall not be tried by a jury *per medietatem linguæ*. But this not to extend to any child within 14 years of age.

(9) Or pretending to have ſkill in phyſiognomy, palmeſtry, or like crafty ſcience, or to tell fortunes.

(10) Or uſing any ſubtil craft to deceive and impoſe on any of his majeſty's ſubjects.

(11) Or playing or betting at any unlawful games or plays.

(12) All perſons who run away, and leave their wives or children, whereby they become chargeable to any pariſh or place.

(13) All petty chapmen, and pedlars, wandring abroad, not being duly licenſed, or otherwiſe authoriſed by law.

(14) All perſons wandring abroad, and lodging in alehouſes, barnes, out-houſes, or in the open air, not giving a good account of themſelves.

(15) All perſons wandring abroad and begging, pretending to be ſoldiers, mariners, or ſeafaring men.

But this ſhall not extend to ſoldiers wanting ſubſiſtence, having lawful certificates from their officers, or the ſecretary at war; or to mariners or ſea-faring men licenſed by ſome teſtimonial or writing under the hand and ſeal of ſome juſtice of the peace, ſetting down the time and place of their landing or diſcharge, and the place to which they are to paſs, and the names of the chief towns or places through which they are to paſs, and limiting the time or their paſ-

ſage,

ſage, while they continue in the direct way to the place to which they are to paſs, and during the time ſo limited.

Which exception hath a reference to the ſtatute of the 39 *El. c.* 17. which is as follows:

All idle and wandring ſoldiers or mariners, or idle perſons which ſhall be wandring as ſoldiers and mariners, ſhall ſettle themſelves in ſome ſervice, labour, or other lawful courſe of life, without wandring, or otherwiſe repair to the places where they were born, or to their dwelling places if they have any, and there remain, betaking themſelves to ſome lawful trade or courſe of life, on pain to be reputed as felons, and to ſuffer as in caſe of felony without benefit of clergy. *ſ.* 2.

And every idle and wandering ſoldier or mariner, which coming from his captain from the ſeas, or from beyond the ſea, ſhall not have a teſtimonial under the hand of a juſtice of the peace, of or near the place where he landed, ſetting down therein the place and time when and where he landed, and the place of his dwelling or birth, unto which he is to paſs, and a convenient time therein limited for his paſſage, or having ſuch teſtimonial, ſhall wilfully exceed the time therein limited, above 14 days; and alſo as well every ſuch idle and wandring ſoldier or mariner, as every other idle perſon wandring as ſoldier or mariner, which ſhall forge or counterfeit any ſuch teſtimonial, or have with him any ſuch teſtimonial forged or counterfeited, knowing the ſame to be counterfeited or forged; in all theſe caſes, every ſuch act or acts to be felony without benefit of clergy. *ſ.* 3.

And the juſtices of aſſize, and juſtices of the peace in ſeſſions, may hear and determine all ſuch offences, and execute the offenders convicted before them, as in caſes of felony is accuſtomed; except ſome honeſt perſon valued at the laſt ſubſidy of 10*l.* in goods, or 40*s.* in lands, or elſe ſome honeſt freeholder, as by the ſaid juſtices ſhall be allowed, will be contented before ſuch juſtices to take ſuch offender into his ſervice for one whole year, and then before the ſaid juſtices will be bound by recognizance of 10*l.* if he keep not the ſaid perſon for one whole year, and bring him to the next ſeſſions for the peace and gaol delivery next enſuing after the ſaid year; and if any ſuch perſon retained depart within the year, without the licence of him that ſo retained him, he ſhall be guilty of felony without benefit of clergy. *ſ.* 4.

But if any ſuch idle and wandring perſon fall ſick by the way, ſo that by reaſon of his weakneſs he cannot travel to his journey's end within the time limited in his teſtimonial

monial, he ſhall not be within the danger of this ſtatute, ſo as he ſettle himſelf in ſome lawful courſe of life as aforeſaid, to repair as aforeſaid to the place where he was born, or was laſt abiding, within convenient time after the recovery of his ſickneſs, and there remain as aforeſaid. *ſ.* 5.

And if any ſuch ſoldier or mariner coming from the ſeas, ſhall not at the time of his landing, or in his travel to the place whereunto he is to repair, going the direct way (have wherewithal to relieve himſelf in his travels homeward), he may reſort to ſome juſtice next adjoining to the place of landing or way, and make known unto him his poverty; who upon perfect notice thereof had, may licenſe [B] him to paſs the next and direct way to the place where he is to repair, and to limit him ſo much time only, as ſhall be neceſſary for his travel thither; and in ſuch caſe, purſuing the form of ſuch licence, he may for his neceſſary relief in his travel, aſk and take the relief that any perſon ſhall willingly give him. *ſ.* 7.

Note; the above words [*have wherewithal to relieve himſelf in his travels homewards*] are brought in from the former vagrant acts, the ſame having been omitted by miſtake in tranſcribing the ſame into the preſent vagrant act: and yet this is the ſole clauſe in any act of parliament now in force, by which power is given to a juſtice of the peace to licenſe any perſon to beg; and of which ſuch evil uſe is often made by profligate perſons, in counterfeiting ſuch licences, and thereby abuſing the country.

Lord *Coke*, upon this ſtatute, ſpeaking of the preventing of perſons from wandring without paſſes, or with the ſame counterfeited, obſerves thereupon, that this excellent work (as he calls it) of preventing them from wandring abroad without lawful licences, is without queſtion feaſible; for upon the making of the ſaid ſtatute, and a good ſpace after, whilſt the juſtices and other officers were diligent and induſtrious, there was not a rogue to be ſeen in any part of *England*; but when the juſtices and others became remiſs, rogues ſwarmed again. 2 *Inſt.* 729.

But, in truth, the great miſchief ſeemeth to be, the ſuffering theſe perſons to wander, at all: Such perſons, above all others, ought to be conveyed immediately from their place of landing or diſcharge, to their place of ſettlement, at the publick charge, for three reaſons; 1. Becauſe, if they be ſailors, they may be uſeful at the ports where they belong. 2. Becauſe otherwiſe, whether they be ſoldiers or ſailors, they become initiated into the trade of begging, which

which they are never after willing to leave. 3. Becauſe being for the moſt part able and luſty, they are moſt likely to do miſchief in the county.

(16) Or pretending to go to work in harveſt.

But this ſhall not extend to any perſon going abroad to work at any lawful work in the time of harveſt, ſo as he carry with him a certificate ſigned by the miniſter and one of the churchwardens or overſeers where he ſhall inhabit, declaring that he hath a dwelling houſe or place there.

Which exception hath reference to a clauſe in the ſtatute of the 13 & 14 *C.* 2. *c.* 12. concerning ſettlements, by which 40 days inhabitancy made a ſettlement: whereby it is enacted, that it ſhall be lawful for any perſon to go into any county, pariſh, or place, to work in time of harveſt, or at any time to work at any other work, ſo that he carry with him a certificate from the miniſter of the pariſh, and one churchwarden and one overſeer, that he hath a dwelling-houſe or place in which he inhabiteth, and hath left wife and children, or ſome of them there (or otherwiſe as the condition of ſuch perſon requireth) and is declared an inhabitant there; and in ſuch caſe, if he ſhall not return when his work is finiſhed, or ſhall fall ſick or impotent, it ſhall not be accounted a ſettlement.

(17) And all other perſons wandring abroad and begging —ſhall be deemed rogues and vagabonds.

III. Incorrigible rogues.

By the 17 *G.* 2. *c.* 5. Incorrigible rogues are thus deſcribed:

(1) All end gatherers offending againſt the ſtatute of the 13 *G.* being convicted of ſuch offence.

By which act of the 13 *G.* *c.* 23. *ſ.* 8. The offence is this *viz.* The collecting, buying, receiving, or carrying any ends of yarn, weſts, thrums, ſhort yarn, or other refuſe of cloth, drugger, or other woollen goods; and the puniſhment of ſuch perſon is, in order to prevent their committing abuſes, by ſuch practices, in the woollen manufacture.

(2) All perſons apprehended as rogues and vagabonds, and eſcaped from the perſons apprehending them, or refuſing to go before a juſtice, or to be examined on oath before ſuch juſtice, or refuſing to be conveyed by ſuch paſs as is herein after directed, or knowingly given a falſe account of themſelves on ſuch examination, after warning given them of their puniſhment.

(3) All rogues or vagabonds who ſhall break or eſcape out of any houſe of correction, before the expiration of the term for which they were committed or ordered to be confined by this act.

(4) All perſons who after having been puniſhed as rogues and vagabonds, and diſcharged ſhall again commit any of the ſaid offences: — All theſe ſhall be deemed incorrigible rogues. *ſ.* 4.

IV. Apprehending rogues.

If any perſon ſhall be found offending againſt this act, the conſtable ſhall apprehend him, and convey or cauſe him to be conveyed to a juſtice of the peace. 17 *G.* 2. *c.* 5. *ſ.* 5.

And any other perſon *may* apprehend him, and carry him to the conſtable, or to a juſtice. *id.*

V. Reward for apprehending.

If any perſon not being a conſtable, ſhall apprehend any ſuch rogue or vagabond, and ſhall deliver him to a conſtable, or convey him to a juſtice; or if any conſtable ſhall ſo apprehend and convey him, it ſhall be lawful for ſuch juſtice to reward him, by making an order (C) under hand and ſeal, upon the high conſtable, to pay 10 *s.* to the perſon ſo apprehending him, within one week after demand, and producing ſuch order, and on his giving a receipt for the ſame; which ſhall be allowed by the treaſurer to ſuch high conſtable, on paſſing his accounts, and delivering ſuch order and receipt, and alſo his own receipt for the ſame to ſuch treaſurer; the treaſurer alſo to be allowed the ſame in his accounts, on producing the ſaid vouchers; and in towns corporate, and other places, where there are no high conſtables, ſuch petty conſtable ſhall pay or retain ſuch reward, and be allowed the ſame in their accounts, on producing the like vouchers. And if any high conſtable, or where there is none, ſuch petty conſtable, ſhall refuſe or neglect to pay ſuch reward on demand, ſuch juſtice by his warrant may levy the ſum of 20 *s.* by diſtreſs and ſale of his goods, and thereout allow the ſaid reward, and ſuch other recompence for his trouble, loſs of time and expences, as the ſaid juſtice ſhall think fit; the overplus to be returned on demand. 17 *G.* 2. *c.* 5. *ſ.* 5.

VI. Penalty

VI. Penalty for not apprehending.

If the conſtable ſhall refuſe or neglect, to uſe his beſt endeavours, to apprehend or convey to ſome juſtice ſuch offender; or if any other perſon, being charged by any juſtice ſo to do, ſhall refuſe or neglect to uſe his beſt endeavours to apprehend and deliver to the conſtable, or to carry ſuch offender before ſome juſtice, where no conſtable can be found; he ſhall, being convicted thereof on view, or oath of one witneſs, before one juſtice, forfeit 10*s.* to the poor, by diſtreſs. 17 *G.* 2. *c.* 5. *ſ.* 5.

VII. Privy ſearch.

The juſtices, or two of them, ſhall four times a year at leaſt, or oftener (if need be) meet in their reſpective diviſions, and by their warrant (D) command the conſtables of every hundred, pariſh, town, and hamlet, who ſhall be aſſiſted with ſufficient men, to make a general privy ſearch in one night, for the apprehending of rogues and vagabonds; and every juſtice ſhall alſo on receiving information, that rogues and vagabonds are in any place within his juriſdiction, iſſue his warrant to the conſtable to ſearch for and apprehend ſuch rogues and vagabonds, and ſuch as they ſhall find upon ſuch ſearch, they ſhall cauſe to be brought before a juſtice. 17 *G.* 2. *c.* 5. *ſ.* 6.

And by the 25 *G.* 2. *c.* 36. Two juſtices, in caſe any perſon apprehended upon a general privy ſearch, or by a ſpecial warrant, ſhall be charged before them with being a rogue and vagabond, or an idle and diſorderly perſon, or with ſuſpicion of felony (although no direct proof be then made thereof) may examine ſuch perſon on oath, as to his ſettlement, and means of livelihood; and the ſubſtance of ſuch examination ſhall be put in writing, and ſigned by ſuch perſon, and by the juſtices, and be tranſmitted to the next ſeſſions to be filed; and if ſuch perſon ſhall not ſhew that he has a lawful way of getting his livelihood, or ſhall not procure ſome reſponſible houſekeeper to his character, and to give ſecurity (if required) for his future appearance at ſome other day to be fixed for that purpoſe, the juſtices may commit him to ſome priſon or houſe of correction, for any time not exceeding ſix days; and in the mean time order the overſeers of the poor, to advertiſe in ſome publick paper, a deſcription of his perſon, and any thing that ſhall

be found on him, or in his cuſtody, and which he ſhall be ſuſpected not to have come honeſtly by, and the place of his commitment, and the time and place appointed for his re-examination; and if no accuſation ſhall be then laid againſt him, he ſhall be diſcharged, or otherwiſe dealt with according to law. *ſ.* 12.

But by the ſhortneſs of the time limited for advertiſing him, this ſeems chiefly calculated for places within the bills of mortality.

VIII. Examination.

Where any rogues or vagabonds, apprehended by any conſtable, or ſuch other perſon as aforeſaid, ſhall be brought before a juſtice, he ſhall inform himſelf by the examination (E) upon oath of the perſon apprehended, or of any other perſon, of the condition and circumſtances of the perſon ſo apprehended, and of the pariſh or place where he was laſt legally ſettled; the ſubſtance of which ſhall be put into writing, and be ſigned by the perſon or perſons ſo examined; and the juſtice ſhall likewiſe ſign the ſame, and tranſmit it to the next ſeſſions, there to be filed and kept on record. 17 *G.* 2. *c.* 5. *ſ.* 7.

IX. Whipping, or impriſonment.

And ſuch juſtice ſhall order ſuch perſon ſo apprehended, to be publickly whipt (F) by the conſtable, petty conſtable, or ſome other perſon, to be appointed by ſuch conſtable, or petty conſtable, of the pariſh or place, where ſuch perſon was apprehended; or ſhall order him to be ſent to the houſe of correction (G) till the next ſeſſions, or for any leſs time, as ſuch juſtice ſhall think proper. 17 *G.* 2. *c.* 5. *ſ.* 7. Note, It is only here expreſſed, generally, that he ſhall be *publickly whipt:* The form and manner thereof may perhaps be beſt collected from the more eſpecial proviſions of former vagrant acts. By the 22 *H.* 8. *c.* 12. the vagrant was to be *carried to ſome market town or other place, and there tied to the end of a cart naked, and beaten with whips throughout ſuch market town or other place, till his body ſhould be bloody by reaſon of ſuch whipping.* By the 39 *El. c.* 4. he was to be *ſtripped naked from the middle upwards, and openly whipped, till his body ſhould be bloody.*

X. *Further puniſhment.*

And where any offender againſt this act ſhall be committed to the houſe of correction till the next ſeſſions, and the juſtices at ſuch ſeſſions ſhall on examination of the circumſtances of the caſe adjudge ſuch perſon a rogue or vagabond, or an incorrigible rogue; they may order ſuch rogue or vagabond to be detained in the houſe of correction, to hard labour, for any further time, not exceeding ſix months, and ſuch incorrigible rogue for any further term not exceeding two years, nor leſs than ſix months; and during his confinement, to be whipped in ſuch a manner, and at ſuch times and place, as they ſhall think fit; and ſuch perſon may, if the ſeſſions think convenient, afterwards be ſent away by a paſs; and if ſuch perſon, being a male, is above the age of 12 years, the court may, before he is diſcharged from the houſe of correction, ſend him to be employed in his majeſty's ſervice by ſea or land; and if ſuch incorrigible rogue, ſo ordered by the ſeſſions to be detained in the houſe of correction, ſhall break out or make his eſcape, or ſhall offend again in like manner, he ſhall be guilty of felony, and be tranſported for ſeven years. 17 *G.* 2. *c.* 5. *ſ.* 9.

And by the 13 & 14 *C.* 2. *c.* 12. The juſtices in ſeſſions may tranſport ſuch rogues, vagabonds, and ſturdy beggars, as ſhall be duly convicted, and adjudged to be incorrigible. *ſ.* 23.

And by the 17 *G.* 2. *c.* 5. If the child of any vagrant, above the age of ſeven years, ſhall be committed to the houſe of correction, the juſtices in ſeſſions, if they ſee convenient, at any time before ſuch child be diſcharged, may order ſuch child to be placed out as a ſervant or apprentice to any perſon who is willing to take ſuch child, till ſuch child ſhall be of age of 21 years, or for a leſs time: And if any offender, who was found wandering with ſuch child, ſhall be again found with the ſame child which was ſo placed out, he ſhall be deemed an incorrigible rogue. *ſ.* 24.

And where any vagrants have been committed to the houſe of correction till the next ſeſſions, if on examination of ſuch perſons no place can be found, to which they may be conveyed, the ſeſſions ſhall order them to be detained and employed in the houſe of correction, untill they can provide for themſelves, or until the juſtices in ſeſſions can place them in ſome lawful calling, as ſervants, apprentices, ſoldiers, mariners, or otherwiſe, either within this realm, or in the plaintations in *America*.. *ſ.* 28.

XI. Conveying.

After ſuch whipping or confinement, the juſtice may, if he thinks convenient, by a paſs (H, I) under hand and ſeal, cauſe him to be conveyed to the place of his laſt legal ſettlement; but if it cannot be found, then to the place of his birth; or if he be under the age of 14 years, and have any father or mother living, then to the place of the abode of ſuch father or mother, there to be delivered to ſome churchwarden or overſeer. 17 *G.* 2. *c.* 5, 7.

And the juſtice ſhall make a duplicate of the paſs and examination, and ſign the ſame: and ſhall afterwards tranſmit the duplicate of the paſs, annexed to the examination, to the next ſeſſions, there to be filed and kept on record; and ſhall annex the duplicate of the examination to the paſs, and ſend it with the ſame; and the ſaid paſs, examination, and duplicate thereof, ſhall and may be read in any court of record as evidence. *ſ.* 8.

And the juſtice who ſhall make the paſs, ſhall with the paſs cauſe likewiſe to be delivered to the conſtable a note or certificate (K) aſcertaining how they are to be conveyed, by horſe, cart or on foot, and what allowance ſuch conſtable is to have for conveying them. *ſ.* 10.

And the conſtable who ſhall receive ſuch paſs and certificate, ſhall convey the perſon according to the direction of the paſs, the next direct way to the place where he is ordered to be ſent, if it be in the ſame county, riding, diviſion, corporation, or franchiſe; if not, he ſhall deliver the ſaid perſon to the conſtable of the firſt town, pariſh, or place, in the next county, riding, diviſion, corporation, or franchiſe; in the direct way to the place whither he is to be conveyed, together with the paſs and duplicate of the examination, taking his receipt for the ſame. And ſuch conſtable ſhall without delay apply to ſome juſtice in the ſame county or diviſion, who ſhall make the like certificate, and deliver it to ſuch conſtable, who ſhall with all ſpeed convey ſuch perſon unto the firſt pariſh, town, or place in the next county or diviſion, in the direct way to the place to which he is to be conveyed. And ſo from one county or diviſion to another, till they come to the place to which ſuch perſon is ſent. And the conſtable, who ſhall deliver ſuch perſon to the churchwarden or other perſon ordered to receive him, ſhall at the ſame time deliver the ſaid paſs, with the duplicate of the examination, taking their receipt for the ſame. *ſ.* 11.

And any juſtice before whom a vagrant ſhall be carried, may order him to be ſearched, and his bundles to be ſuſpected by the conſtable or other officer in his preſence; and if it ſhall appear that ſuch vagrant ſhall be found to have ſufficient wherewithal to pay for his paſſage, either in whole or in part, the juſtice ſhall order ſo much of the money to be paid, or other effects found upon ſuch vagrant to be ſold, and employed towards the expence of taking up and paſſing ſuch vagrant, returning the overplus, after deducting the charges of ſuch ſale. *ſ.* 12.

And the juſtices in ſeſſions ſhall limit what rates and allowances, by the mile, or otherwiſe, ſhall be made, for conveying or maintaining rogues, vagabonds, or incorrigible rogues; and make ſuch other orders for the more regular proceeding therein, as they ſhall think proper. *ſ.* 16.

And if any petty conſtable ſhall bring to any high conſtable ſuch certificate as aforeſaid, together with a receipt or note from the conſtable to whom the perſon was delivered, the ſaid high conſtable ſhall pay the rates aſcertained by ſuch certificate, taking the petty conſtable's receipt; the high conſtable to be allowed the ſame by the treaſurer on paſſing his accounts, on his delivering up ſuch certificate and receipt, and giving his own receipt for the ſame to ſuch treaſurer; the ſame to be allowed the treaſurer in his accounts, on his delivering up the vouchers aforeſaid. And if the high conſtable ſhall refuſe or neglect to pay the ſame on demand, it ſhall be lawful for one juſtice, by his warrant, to levy double the ſum by diſtreſs, and thereout to allow the petty conſtable the ſum aſcertained by the certificate, and ſuch other recompence for his trouble, loſs of time and expences, as the juſtice ſhall think fit; the overplus to be returned to the high conſtable on demand. And in cities, towns corporate, and other places where there is no high conſtable, the petty conſtable ſhall be allowed what he ſhall ſo pay purſuant to ſuch certificate, in his accounts, on delivering up ſuch vouchers: Or if any maſter of a houſe of correction ſhall deliver ſuch certificate and receipt to the treaſurer, the treaſurer ſhall pay the ſame to him, taking his receipt for the ſame, and be allowed the ſame in his accounts, on delivering up ſuch vouchers. *ſ.* 17.

And by the 26 *G.* 2. *c.* 34. Where the high conſtable hath not money in his hands ſufficient to anſwer the ſaid expences, the treaſurer ſhall pay the ſame to ſuch petty conſtable, on his producing the certificate, and ſuch other vouchers as aforeſaid. *ſ.* 2.

And if any petty conſtable, or governor of any houſe of correction, ſhall counterfeit any ſuch certificate or receipt, or knowingly permit any alteration to be made therein; he ſhall forfeit 50*l.* And if he ſhall not convey, or cauſe to be conveyed, ſuch vagrants, or not deliver them to the proper perſon; or if any conſtable ſhall refuſe to receive any ſuch perſon, or to give ſuch receipt, he ſhall forfeit 20*l.* by diſtreſs and ſale by warrant of the juſtices in ſeſſions, where the offence ſhall be committed; half to the informer, and half to the treaſurer, to be applied by him as part of the publick ſtock; returning the overplus upon demand, charges of diſtreſs being firſt ſatisfied. 17 *G.* 2. *c.* 5. *ſ.* 18.

XII. What to be done with at the place to which he is ſent.

The pariſh or place to which any rogue, vagabond, or incorrigible rogue ſhall be conveyed, ſhall employ in work, or place in ſome workhouſe or almſhouſe, the perſon ſo conveyed, until he ſhall betake himſelf to ſome ſervice or other employment: And if he ſhall refuſe to work, or not betake himſelf to ſome ſervice or other employment, the overſeers may cauſe him to be carried to ſome juſtice, to be ſent to the houſe of correction, there to be kept to hard labour. 17 *G.* 2. *c.* 5. *ſ.* 19.

But if the churchwarden or other perſon who ſhall receive any perſon ſo ſent, ſhall think the examination to be falſe, he may carry the perſon ſo ſent before a juſtice, who if he ſee cauſe, may commit ſuch perſon to the houſe of correction till the next ſeſſions; and the juſtices there, if they ſee cauſe, may deal with ſuch perſon as an incorrigible rogue: But the perſon ſo ſent, ſhall not be removed from the place to which ſent, but by order of two juſtices, in the ſame manner as other poor perſons are removed to the place of their ſettlement. *ſ.* 11.

XIII. Scotiſh *vagrants.* (L)

The conſtable of any pariſh or place, within the counties of *Cumberland*, *Northumberland*, *Durham*, or town of *Berwick*, ſhall on any perſon being ſo delivered to him by a paſs and examination, whoſe place of legal ſettlement is in *Scotland*, deliver the examination to the clerk of the peace, to be kept amongſt the records; and convey ſuch perſon with the paſs into the next adjoining ſhire, ſtewartry, or place, in that part of the united kingdom, and deliver him to ſome conſtable or other officer of the next pariſh, diſtrict,

ſtiſtrict, or place within the ſaid ſhire, ſtewartry, or place, taking his receipt for him; and ſuch officer ſhall receive ſuch perſon, and give ſuch receipt, and diſpoſe of him according to law. And if any ſuch vagrant, after being ſo conveyed into *Scotland*, ſhall be found wandring, begging, or miſbehaving himſelf in *England*, he ſhall be deemed an incorrigible rogue. 17 *G.* 2. *c.* 5. *ſ.* 13.

XIV. Iriſh *vagrants.* (M)

Every maſter of a veſſel bound for *Ireland*, the *Iſles of Man*, *Jerſey*, *Guernſey*, or *Scilly*, ſhall on warrant to him directed, under the hand and ſeal of a juſtice of the place where ſuch veſſel ſhall lie (N), take on board ſuch vagrant as ſhall be expreſſed in the warrant, and convey him to ſuch place; and for the charges thereof, the conſtable who ſerves him with the warrant, ſhall pay him ſuch rate by the head, as the juſtices in ſeſſions ſhall appoint; and ſuch maſter ſhall on the back of the warrant ſign a receipt for the money ſo paid, and alſo for the vagrant ſo delivered. Which warrant ſo indorſed ſhall be produced to the juſtice who ſigned and ſealed the ſame, and upon his allowance thereof, under his hand, the money ſo paid ſhall be repaid by the county, as other money for conveying vagrants. And ſuch maſter neglecting or refuſing to tranſport ſuch vagrants, or to indorſe ſuch receipt, ſhall forfeit 5 *l.* to the poor of the pariſh or place where the offence ſhall be committed, to be levied by diſtreſs and ſale of the ſhip or any goods within the ſame, by warrant of one juſtice, returning the overplus on demand, after the penalty and charges of the ſame are ſatisfied. 17 *G.* 2. *c.* 5. *ſ.* 14.

But no maſter ſhall be compelled to take on board more than one vagrant, for every 20 tuns burden. *ſ.* 15.

XV. Lunatick vagrant.

Whereas there are ſometimes perſons, who by lunacy, or otherwiſe, are furiouſly mad, or ſo far diſordered in their ſenſes, that they made be dangerous to be permitted to go abroad, it ſhall be lawful for two juſtices where ſuch perſon ſhall be found, by their warrant (O) directed to the conſtables, churchwardens, and overſeers, or ſome of them, to cauſe ſuch perſon to be apprehended, and kept ſafely locked up in ſome ſecure place within the county, or precinct, as ſuch juſtices ſhall appoint; and, if ſuch juſtices find it neceſſary to be there chained, if the ſettlement of

ſuch

ſuch perſon be within ſuch county or precinct; and if not then to be ſent to the place of his laſt legal ſettlement by a paſs, *mutatis mutandis*, and ſhall be locked up or chained, by warrant of two juſtices of the place to which he is ſent: And the reaſonable charges of removing, and of keeping, maintaining and curing ſuch perſon, during ſuch reſtraint (which ſhall be during ſuch time only as ſuch lunacy or madneſs ſhall continue) ſhall be paid, ſuch charges being firſt proved upon oath, by order of two juſtices (P) directing the churchwardens, or overſeers, where any goods, chattels, lands, or tenements of ſuch perſon ſhall be, to ſeize and ſell ſo much of the goods and chattels, or receive ſo much of the annual rents of the lands and tenements, as is neceſſary to pay the ſame; and to account for what is ſo ſeized, ſold, or received, to the next ſeſſions: But if ſuch perſon hath not an eſtate to pay the ſame, over and above what is ſufficient to maintain his family, then ſuch charges ſhall be paid by the pariſh, town, or place, to which ſuch perſons belongs, by order of two juſtices, directed to the churchwardens and overſeers for that purpoſe. 17 *G.* 2. *c.* 5. *ſ.* 20.

But this ſhall not extend to reſtrain the king's prerogative, or power of the lord chancellor, or the chancellor of the county palatine of *Lancaſter*, or the chamberlain of the county palatine of *Cheſter*, concerning ſuch lunaticks; or to reſtrain or prevent any friend or relation of ſuch lunaticks, from taking them under their own care and protection. *ſ.* 21.

XVI. Penalty of lodging vagrants.

If any perſon ſhall knowingly permit any rogue, vagabond, or incorrible rogue, to lodge or take ſhelter in his houſe, barn, or other outhouſe or building, and ſhall not apprehend and carry him before a juſtice, or give notice to the conſtable ſo to do; and ſhall be convicted thereof by confeſſion, or oath of one witneſs, before one juſtice; he ſhall forfeit not exceeding 40 *s.* nor leſs than 10 *s.* half to the informer, and half to the poor, by diſtreſs and ſale; and if any charge ſhall be brought on any pariſh or place, by means of ſuch offence, the ſame ſhall be anſwered to the ſaid pariſh or place by ſuch offender, and be levied by diſtreſs and ſale of his goods as aforeſaid: And if ſufficient diſtreſs cannot be found, ſuch offender ſhall be committed to the houſe of correction by the juſtice, for any time not exceeding one month. 17 *G.* 2. *c.* 5. *ſ.* 23.

XVII. Chil-

XVII. Children born in vagrancy.

Whereas women wandring and begging are often delivered of children, in parishes and places to which they do not belong, whereby they become chargeable to the same, it is enacted, that where any such woman shall be so delivered, and become chargeable, the churchwardens or overseers may detain such woman in their custody, until they can safely convey her to a justice; who shall examine her, and commit her to the house of correction until the next sessions, who may, if they see convenient, order her to be publickly whipped, and detained in the house of correction for any further time not exceeding six months. And upon application by the churchwardens and overseers of the place where she was so delivered, the justices at such sessions shall order the treasurer to pay them such a sum, as shall be adjudged a reasonable satisfaction for the charges such place has been put to on such woman's account. And if such woman shall be detained and conveyed to justice as aforesaid, the child of which she is delivered, if a bastard, shall not be settled in the place where so born, nor be sent thither for want of other settlement, by a pass, by virtue of this act; but the settlement of such woman shall be deemed the seetlement of such child. 17 *G.* 2. *c.* 5. *s.* 25.

And that it may appear, that the overseers have done what was incumbent upon them, in order to avoid such settlement, it is requisite for the justice (as he ought to do in all other cases wherein he acteth as judge) to make a record (Q) of the whole proceedings before him; which record (as it seemeth) will be the proper evidence in such case, if the settlement shall afterwards be contested.

XVII. General penalty for hindring the execution of the vagrant act.

If any constable, or other officer, or governor of any house of correction, shall be defective in his duty, in any case for which no punishment is herein before particularly provided; or if any person shall hinder the execution of this act; or shall rescue any person apprehended or passing from place to place by virtue thereof; or shall be advising, aiding or assisting to his escape; and shall be thereof convicted, on oath of one witness, before one justice, he shall forfeit not exceeding 5 *l.* nor under 10 *s.* to the poor, by distress;

diſtreſs; and if ſufficient diſtreſs cannot be found, to be committed to the houſe of correction to be kept to hard labour, not exceeding two months. 17 *G.* 2. *c.* 5. *ſ.* 22.

XIX. Charges of maintaining and conveying vagrants.

To defray the expences of apprehending, conveying, and maintaining rogues, vagabonds, and incorrigible rogues, and defraying all other expences neceſſary for the execution of this act, not herein before provided for, the juſtices in ſeſſions may cauſe ſuch ſums as ſhall be neceſſary, to be raiſed in the ſame manner as the general county rate. 17 *G.* 2. *c.* 5. *ſ.* 33.

XX. Appeal.

Any perſon aggrieved by any act of any juſtice out of ſeſſions, in or concerning the execution of this act, may appeal to the next general or quarter ſeſſions of the county, riding, liberty, or diviſion, giving reaſonable notice thereof; whoſe order thereupon ſhall be final. 17 *G.* 2. *c.* 5. *ſ.* 26.

XXI. Treble coſts.

Perſons ſued for any thing done in the execution of this act may plead the general iſſue; and if they recover, ſhall have treble coſts. 17 *G.* 2. *c.* 5. *ſ.* 34.

XXII. Exception of ſpecial franchiſes.

In all cities and towns, where virtue of ſpecial acts of parliament, the charge of paſſing vagrants is to be defrayed in other manner than is by this act directed; or where ſuch vagrants, by virtue of ſpecial ſtatutes, are to be apprehended and conveyed by any perſon or officer, other than thoſe named in this act, the ſame ſhall not be altered hereby: And perſons conveyed in *London*, ſhall not be delivered in any other precinct within the city, but in the next county. 17 *G.* 2. *c.* 5. *ſ.* 27.

A. Order

A. Order upon the overſeer to pay 5 *s.* for apprehending a perſon begging in his own pariſh.

Weſtmorland. { To the overſeers of the poor of the pariſh of ——— in the ſaid county.

WHEREAS *it duly appears unto me* John More, *eſquire, one of his majeſty's juſtices of the peace in and for the ſaid county, that* A. O. *of* ——— *in the pariſh of* ——— *in the ſaid county, an idle and diſorderly perſon, did on the* —— *day of* ——— *go about from door to door* [or, *place himſelf in the ſtreets, highways, and paſſages*] *in the ſaid pariſh, to beg and gather alms there; and was then and there apprehended in the ſaid pariſh of* —— *by* A. A. *an inhabitant of the ſaid pariſh, and was by him brought before me in order to be dealt withal according to law: I do hereby order you, or ſome or one of you, to pay unto the ſaid* A. A. *the ſum of* 5 s. *on demand, as a reward for apprehending the ſaid* A. O. *he producing and delivering to you this order, and giving to you a receipt for the ſaid ſum. Given under my hand and ſeal at* Grimeſhill *in the ſaid county, the* —— *day of* — *in the* —— *year of the reign of* ——.

B. Mariner's licence to paſs unapprehended, (as intended by the ſtatute, tho' not ſufficiently expreſſed.)

Weſtmorland. { To all conſtables and others whom it may concern.

WHEREAS *it appeareth unto me* John Robinſon, *eſquire, one of his majeſty's juſtices of the peace for the ſaid county; that* A. M. *mariner, did on the* —— *day of* ———*land at* —— *in the ſaid county, that his lawful place of abode is at* ——— *and that he hath nothing wherewith to relieve himſelf in his travels thither: I do hereby licenſe him to paſs in* ——— *days time, through the towns of* —— *and*—— *in the direct way to* —— *aforeſaid; and to aſk and take ſuch relief in his travels in ſuch direct way as aforeſaid, as any perſon ſhall willingly give hime Given under my hand and ſeal at* Flodder *in the ſaid county, the* —— *day of* —— *in the year of our lord* ——.

C. Order

C. Order for payment of 10 *s.* for apprehending a vagrant.

Weſtmorland. { To the high conſtable of ——

WHEREAS *it duly appeareth unto me* John Thomſon, *eſquire, one of his majeſty's juſtices of the peace for the ſaid county, that* A. R. *a rogue and vagabond, was found wandring and begging,* [or, as the ſaid caſe ſhall be] *in the pariſh of* ——— *in the ſaid county; which ſaid* A. R. *was this day brought before me by* A. I. *of* ——— *yeoman, in order to be dealt withal according to law: I do hereby order you to pay unto the ſaid* A. I. *as a reward for apprehending and bringing before me the ſaid rogue and vagabond, the ſum of* 10 *s. within one week after demand thereof made, upon his producing and delivering to you this order, and giving unto you his receipt for the ſaid ſum. Given under my hand and ſeal at* Brough *in the ſaid county, the* —— *day of* ———

D. Warrant for privy ſearch.

Weſtmorland. { To the high conſtable of *Lonſdale Ward* within the ſaid county.

AT *a meeting of the juſtices of our lord the king aſſigned to keep the peace within the ſaid county, held at* ——— *for the diviſion of* Lonſdale Ward *aforeſaid, this* ——— *day of* ——— *in the* —— *year of the reign of* ———*by us* —— *eſquires, two of the ſaid juſtices aſſembled at the ſaid meeting, being reſident, living and dwelling within the ſaid diviſion.*

We do hereby command you forthwith to iſſue your warrants to all the petty conſtables within the ſaid ward, for making a general privy ſearch for rogues and vagabonds, according to the form hereon indorſed. Given under our hands and ſeals at ——— *aforeſaid, in the county aforeſaid, the day and year aforeſaid.*

The

The form of the ſaid high conſtable's warrant.

Weſtmorland, Lonſdale Ward } To the conſtable of —

BY *virtue of a precept from his majeſty's juſtices of the peace for the ſaid county, acting in and for the ſaid Ward, at their ſpecial meeting for that purpoſe aſſembled, you are hereby required in his ſaid majeſty's name, commanding and taking to your aſſiſtance ſufficient men, within your conſtablewick (who are hereby required to aſſiſt you accordingly), to make a general privy ſearch, in the night of the ——— day of ——— throughout your ſaid conſtablewick, for the finding and apprehending of rogues and vagabonds: And ſuch as you ſhall ſo find upon ſuch ſearch, you are to carry forthwith before ſome of his ſaid majeſty's juſtices of the peace for the ſaid county, to be dealt withal according to law: Herein fail you not. Given under my hand, the ——— day of ——— in the year of our lord* ——

Edward Cooke, *high conſtable.*

E. Examination of a vagrant.

Weſtmorland. THE *examination of* A. O. *a rogue and vagabond, taken on oath before me — one of his majeſty's juſtices of the peace in and for the ſaid county, the ———day of———in the ———year of the reign of* ——

Who on his oath ſaith, That he was born at ——— [and ſo trace out the hiſtory of his life, ſo far forth as to aſcertain his legal place of ſettlement.]

A. O.

Taken and ſigned the day and year above-written, before me the aboveſaid † his mark.

J. P.

F. Warrant

F. Warrant to the conſtable for whipping a vagrant.

Weſtmorland. { To the conſtable of ———

FORASMUCH *as* A. O. *a rogue and vagabond, was this day found wandring and begging in the pariſh of* ——— *in the ſaid county, not having obtained any legal ſettlement there, and was thereupon apprehended, and is now brought before me* Henry Lowther, *clerk, one of the juſtices of our lord the king aſſigned to keep the peace within the ſaid county, that he may be puniſhed and dealt withal according to law: Theſe are therefore to command you to ſtrip, or cauſe to be ſtripped, the ſaid* A. O. *naked from the middle upwards, and publickly to whip, or cauſe him to be whipped, till his body be bloody; and afterwards to remove and convey the ſaid* A. O. *according to the directions of the paſs herewith delivered to you. Given under my hand and ſeal at* Lowther *in the ſaid county, the* ——— *day of* ——— *in the* ——— *year* ———

G. Commitment of a vagrant to the houſe of correction.

Weſtmorland. { To the conſtable of ——— in the ſaid county, and to the keeper of the houſe of correction at ——— in the ſaid county.

FORASMUCH *as* A. O. *a rogue and vagabond, was this day found wandring and begging in the pariſh of* ——— *in the ſaid county, not having obtained any legal ſettlement there, and was thereupon apprehended, and is now brought before me* Richard Burn, *clerk, one of the juſtices of our lord the king aſſigned to keep the peace within the ſaid county, that he may be puniſhed and dealt withal according to law: Theſe are therefore to command you the ſaid conſtable, to carry the ſaid* A. O. *to the ſaid houſe of correction, and deliver him to the ſaid keeper thereof, together with this warrant, And I do hereby command you the ſaid keeper to receive the ſaid* A. O. *into your cuſtody in the ſaid houſe of correction, and him there ſafely to keep until the next general quarter ſeſſions of the peace to be holden for the ſaid county: And*

have

have you him then there, together with this precept. Given under my hand and ſeal at Orton *in the ſaid county, the —— day of —— in the ——— year of the reign of ——*

H. Vagrant paſs within the ſame juriſdiction.

Weſtmorland. { To the conſtable of —— in the ſaid county, to receive and convey; and to the churchwardens, chapelwardens, or overſeers of the poor of the pariſh of ——— in the ſaid county, or either of them, to receive and obey.

WHEREAS A. O. *was apprehended within the conſtablewick of ——— aforeſaid, in the county aforeſaid, as a rogue and vagabond,* videlicet, ——— *and upon examination of the ſaid* A. O. *taken before me* J. P. *eſquire, one of his majeſty's juſtices of the peace in and for the ſaid county (which examination is hereunto annexed) it doth appear, that —— Theſe are therefore to require you the ſaid conſtable, to convey the ſaid* A. O. *in the next direct way to the ſaid pariſh of —— within the ſaid county, and there to deliver him to ſome churchwarden, chapelwarden, or overſeer of the poor of the ſame pariſh of ——— to be there provided for according to law. And you the ſaid churchwardens, chapelwardens, and overſeers of the poor, are hereby required to receive the ſaid perſon, and provide for him as aforeſaid. Given under my hand and ſeal the —— day of —— in the year of our lord ——*

I. Vagrant paſs from county to county.

Weſtmorland. { To the conſtable of ——— in the ſaid county of *W.* and alſo to all conſtables and other officers whom it may concern, to receive and convey; and to the churchwardens, chapelwardens, or overſeers of the poor of the pariſh of —— in the county of ——— or either of them, to receive and obey.

WHEREAS A. O. *was apprehended in the townſhip of ——— aforeſaid, in the county of* W. *aforeſaid,*

as a rogue and vagabond, videlicet, —— *and upon examination of the ſaid* A. O. *taken before me* J. P. *eſquire, one of his majeſty's juſtices of the peace in and for the ſaid county of* W. *upon oath (which examination is hereunto annexed) it doth appear, that* ——— *Theſe are therefore to require you the ſaid conſtable to convey the ſaid* A. O. *to the town of* ——— *in the county of* ——— *that being the firſt town in the next precinct through which he ought to paſs in the direct way to the ſaid pariſh of* —— *in the county of* ——— *to which he is to be ſent, and to deliver him to the conſtable or other officer of ſuch firſt town in ſuch next precinct, together with this paſs, and the duplicate of the examination of the ſaid* A. O. *taking his receipt for the ſame. And the ſaid* A. O. *is to be thence conveyed on in like manner to the ſaid pariſh of* —— *in the county of* —— *there to be delivered to ſome of the churchwardens or overſeers of the poor of the ſame pariſh of* ——— *to be there provided for according to law. And you the ſaid churchwardens, chapelwardens, and overſeers of the poor, are hereby required to receive the ſaid perſon, and provide for him as aforeſaid. Given under my hand and ſeal the* ——— *day of* ——— *in the year of our lord* ———

K. The certificate, according to the directions of the ſtatute, ſhall be in the form, or to the effect following.

WHEREAS *by a paſs* (reciting the ſubſtance or effect of the ſaid paſs) *I* (or *we*) *do hereby order and direct the ſaid perſon* (or *perſons*) *to be conveyed on foot* (or, *in a cart*, or *by horſe*, &c.) *to the ſaid town* (or *pariſh*) *of* —— *in* ——— (or other place, deſcribing it) *in the way to ſuch pariſh (town*, or *place*, as the caſe ſhall be) *in* —— *days time; for which the ſaid conſtable* (&c.) *is to be allowed the ſum of* —— *and no more. Given under my hand* (or *our hands) this* ——— *day*, &c.

L. Vagrant paſs to *Scotland.*

Weſtmorland. To the conſtable of —— in the ſaid county of *W.* and alſo to all conſtables and other officers whom it may concern, to receive and convey; and to all conſtables and other officers within that part of *Great Britain* called *Scotland*, whom it may concern, to receive and obey.

WHEREAS A. O. *was apprehended in the town of —— aforeſaid, in the county of* W. *aforeſaid, as a rogue and vagabond,* videlicet, ——— *and upon examination of the ſaid* A. O. *taken before me* J. P. *eſquire, one of his majeſty's juſtices of the peace in and for the ſaid county of* W. *upon oath (which examination is hereunto annexed), it doth appear that his lawful place of ſettlement is in that part of* Great Britain *called* Scotland: *Theſe are therefore to require you the ſaid conſtable of ——— aforeſaid, in the county of* W. *aforeſaid, to convey the ſaid* A. O. *to the town of ——— in the county of ——— that being the firſt town in the next precinct through which he ought to paſs, in the direct way to that part of* Great Britain *called* Scotland *aforeſaid, to which he is to be ſent, and to deliver him to the conſtable or other officer of ſuch firſt town in ſuch next precinct, together with this paſs, and the duplicate of the examination of the ſaid* A. O. *taking his receipt for the ſame; and the ſaid* A. O. *is to be thence conveyed on in like manner into the next adjoining ſhire, ſtewartry or place, in that part of* Great Britain *called* Scotland *aforeſaid, and is there to be delivered to ſome conſtable or other officer of the next pariſh, diſtrict, or place within ſuch next adjoining ſhire, ſtewartry, or place aforeſaid, taking his receipt for the ſame; and ſuch next officer in that part of* Great Britain *called* Scotland *aforeſaid, is hereby required to receive the ſaid* A. O. *and give ſuch receipt as aforeſaid, and to diſpoſe of him the ſaid* A. O. *according to law. Given under my hand and ſeal this —— day of ——— in the year of our lord ———.*

M. Vagrant pass to *Ireland.*

Westmorland. { To the constable of —— in the said county; and also to all constables and other officers whom it may concern to receive and convey; and to all other officers of the peace whom it may concern, to receive and obey.

WHEREAS A. O. *was apprehended in the town of* ——— *in the said county, as a rogue and vagabond* videlicet, ——— *and upon examination of the said* A. O. *taken before me* J. P. *esquire, one of his majesty's justices of the peace in and for the said county upon oath (which examination is hereunto annexed) it doth appear, that the lawful settlement of him the said* A. O. *is in the kingdom of* Ireland: *These are therefore to require you the said constable of* ——— *to convey the said* A. O. *to the town of* —— *in the county of* ——— *that being the first town in the next precinct through which he ought pass, in the direct way to the said kingdom of* Ireland, *to which he is to be sent, and to deliver him to the constable or other officer of such first town in such next precinct, together with this pass, and the duplicate of the examination of the said* A. O. *taking his receipt for the same. And the said* A. O. *is to be thence conveyed on in like manner until he shall arrive in the county of* ——— *and the constable or other officer to whom he shall be delivered in the said county of* ——— *is hereby required to apply to some justice of the peace in and for the said county of* ——— *for a warrant to the master of any ship or vessel bound for the said kingdom of* Ireland, *that shall lie in the said county of* ——— *to take on board the said ship or vessel him the said* A. O. *and convey him to such place in the said kingdom of* Ireland, *as such ship or vessel shall be bound unto. Given under my hand and seal the* ——— *day of* —— *in the year of our lord* ———.

N. Warrant

N. Warrant to a maſter of a ſhip to export a vagrant.

Weſtmorland. { *J. P.* eſquire, one of the juſtices of our lord the king, aſſigned to keep the peace within the ſaid county: To *A. M.* maſter of the ſhip called the ——— of ———now lying or being at ——— and bound for ——— in the kingdom of *Ireland*, ſendeth greeting.

THESE *are in the name of our ſaid lord the king to require you to take on board the ſaid ſhip,* A. O. *and* B. O. *vagrants, both of them being natives, of the kingdom of* Ireland *aforeſaid, and having no ſettlement in* England, *and them to convey to* ——— *aforeſaid, in the kingdom of* Ireland, *aforeſaid, or to ſuch other place in that kingdom as you ſhall arrive at; and for the charges thereof you ſhall take, and* A. C. *conſtable of* ——— *at the time he ſhall ſerve you with this warrant, ſhall pay, and is hereby required to pay unto you the ſum of* ——— *in the whole: that is, at the rate of* ——— *by the head, for each of the ſaid vagrants ſo to be delivered unto you, the ſame being the rate laſt appointed by the juſtices of our ſaid lord the king aſſigned to keep the peace within the ſaid county, at their general quarter ſeſſions of the peace held in and for the ſaid county. And you are, on the back of this warrant, to ſign a receipt for the money ſo paid, and alſo for the ſaid vagrants ſo delivered unto you. Given under my hand and ſeal at* ——— *in the ſaid county, the* ——— *day of* ——— *in the* ——— *year* ———

O. Warrant to ſecure a lunatick.

Weſtmorland. { To the conſtables, churchwardens, and overſeers of the poor of ———.

WHEREAS *it hath been proved before us —two of the juſtices of our lord the king, aſſigned to keep the peace within the ſaid county, upon the oaths of* A. W. *and* B. W. *both of the pariſh of* ——— *in the county aforeſaid, gentlemen, that* A. L. *late of* ——— *frequently goeth at large in the ſaid pariſh of* ——— *and that he the ſaid* A. L. *is by lunacy ſo far diſordered in his ſenſes, that he is dangerous to be permitted to*

go

go abroad; and that his legal ſettlement is in the pariſh of —— Theſe are therefore to authorize and require you, and every of you, to cauſe the ſaid A. L. *to be apprehended and kept ſafely locked up in the houſe of* A. K. *at ——— in the ſaid county, the ſaid* A. K. *being willing to keep and entertain him the ſaid* A. L. *for a reaſonable allowance in that behalf, and the ſaid houſe being a ſecure place: And the ſaid* A. L. *is to be kept ſo locked up only ſo long as ſuch lunacy or diſorder ſhall continue, and no longer. Given under our hands and ſeals at —— in the ſaid county, the —— day of ——.*

P. Order to charge the lunatick's eſtate, with his keeping, maintenance, and cure.

Weſtmorland. { To the churchwardens and overſeers of the poor of the pariſh of ——— in the ſaid county.

WHEREAS A. L. *late of —— in the ſaid county, being a perſon lunatick, and ſo far diſordered in his ſenſes, that he was and is dangerous to be permitted to go abroad, hath by warrant under the hands and ſeals of us ——— two of his majeſty's juſtices of the peace for the ſaid county been apprehended and ſafely locked up in the houſe of* A. K. *at ——— in the ſaid county, the ſaid houſe being a ſecure place for that purpoſe; And whereas it appears to us, on the oaths of* C. W. *churchwarden, and* O. P. *overſeer of the poor of the pariſh of ——— that they the ſaid churchwarden and overſeer have reaſonably expended the ſum of ——— in removing the ſaid* A. L. *to the ſaid houſe of the ſaid* A. K. *and in keeping, maintaining, and curing him there: Theſe are therefore to authorize and command you, to ſeize and ſell ſo much of the goods and chattels, and to receive ſo much of the annual rents of the lands and tenements of him the ſaid* A. L. *within your ſaid pariſh, as ſhall be neceſſary to pay the ſame: And for what ſhall be ſo ſeized, ſold, or received by you, you are to account at the next quarter ſeſſions of the peace to be holden for the ſaid county. Given under our hands and ſeals, at ——— in the ſaid county, the ——— day of ——.*

Q. Record

Q Record to avoid the ſettlement of a baſtard child born in vagrancy.

Weſtmorland. BE *it remembered, that on the —— day of —— in the — year of the reign of our ſovereign lord* George *the third, of* Great Britain, France, *and* Ireland, *king, defender of the faith, and ſo forth,* A. B. *and* C. D. *overſeers of the poor of the pariſh of ——— in the ſaid county, at ——— in the ſaid county, do bring unto me —— one of the juſtices of our ſaid lord the king, aſſigned to keep the peace within the ſaid county, and alſo to hear and determine divers felonies, treſpaſſes, and other miſdemeanors in the ſaid county committed, the body of one* A. P. *and do complain unto me the juſtice aforeſaid, and give me to be informed, that on the —— day of ——— in the year aforeſaid, at ——— in the pariſh aforeſaid, in the county aforeſaid, ſhe the ſaid* A. P. *was wandring and begging, and that ſhe the ſaid* A. P. *then and there, to wit, on the ſaid —— day of ——— at ——— aforeſaid, in the pariſh aforeſaid and county aforeſaid, ſo wandering and begging, was delivered of a (male) child; and that thereby ſhe the ſaid* A. P. *hath become chargeable, and is now chargeable, to the ſaid pariſh of ——— and that ſhe the ſaid* A. P. *had not then, nor yet hath, any lawful ſettlement in the ſaid pariſh of ——— And thereupon they the ſaid overſeers of the poor of the pariſh aforeſaid, do pray of me the juſtice aforeſaid, that for themſelves, and for the other inhabitants of the pariſh aforeſaid, a due remedy may be provided, and that juſtice may be done in that behalf, according to the form of the ſtatute in that caſe made. Which complaint, information, and prayer, by me the juſtice aforeſaid being heard, I the ſaid* J. P. *at ——— aforeſaid, in the county aforeſaid on the ſaid —— day of —— in the year aforeſaid, upon the examination of the ſaid* A. P. *upon oath by me unto her upon the holy goſpel adminiſtered, and upon other lawful evidence and teſtimony before me had and made, do find, that on the —— day of ———* [and ſo on, verbatim, as is ſet forth above in the information]: *And thereupon it is conſidered by me the juſtice aforeſaid, that ſhe the ſaid* A. P. *be committed, and is by me committed to the houſe of correction at —— in the county aforeſaid, until the next quarter ſeſſions of the peace to be held within and for the ſaid county. In teſtimony whereof, I the ſaid* J. P. *the juſtice aforeſaid, at ——— aforeſaid, in the county aforeſaid, the ——— day of —— aforeſaid, in the year aforeſaid, unto this record do ſet my ſeal.*

Vagrants.

Vellum. See **Stamps.**
Venire. See **Proceſs.**
Verdict See **Jurors.**
Verjuice. See **Exciſe.**
Victuallers. See **Alehouſes.**
Vinegar. See **Exciſe.**
Wages. See **Servants.**
Waif. See **Eſtray.**

Warrant.

FOR a warrant to ſearch for ſtolen goods, ſee **Search Warrant.**

If a juſtice ſee a felony or other breach of the peace committed in his preſence, he may in his own perſon apprehend the felon; and ſo he may by word command any perſon to apprehend him, and ſuch command is a good warrant without writing: but if the ſame be done in his abſence, then he muſt iſſue his warrant in writing. 2 *H. H.* 86.

Concerning which we will ſhew,

I. For what cauſes it may be granted.
II. What is to be done previous to the granting of it.
III. How far it is grantable on ſuſpicion.
IV. The form of it.

I. For what cauſes it may be granted.

There ſeems to be no doubt, but that a warrant may be lawfully granted by any juſtice, for treaſon, felony, or præmunire, or any other offence againſt the peace: Alſo it ſeems clear, that where-ever a ſtatute gives to any one juſtice a juriſdiction over any offence, or a power to require

quire any perſon to do a certain thing ordained by ſuch ſtatute, it impliedly gives a power to every ſuch juſtice to make out a warrant to bring before him any perſon accuſed of ſuch offence, or compellable to do the thing ordained by ſuch ſtatute; for it cannot but be intended, that a ſtatute giving a perſon juriſdiction over an offence, doth mean alſo to give him the power incident to all courts, of compelling the

But in caſes where the king is no party, or where no corporal puniſhment is appointed, as in caſes for ſervants wages, and the like, it ſeemeth that a *ſummons* is the more proper proceſs; and for default of appearance the juſtice may proceed; and ſo indeed oftentimes it is directed by ſpecial ſtatutes.

II. What is to be done previous to the granting of it.

It is convenient, though not always neceſſary, that the party who demands the warrant be firſt examined on oath, touching the whole matter whereupon the warrant is demanded, and that examination put into writing. 1 *H. H.* 582. 2 *H. H.* 111.

Or at leaſt it is ſafe to bind him over to give evidence; leſt afterwards when the offender ſhall be apprehended, or ſhall ſurrender himſelf, the party that procured the warrant be gone. *Dalt. c.* 169.

III. How far it is grantable on ſuſpicion.

Lord *Hale* proves at large, contrary to the opinion of lord *Coke* (4 *Inſt.* 177.) that a juſtice hath power to iſſue a warrant to apprehend a perſon ſuſpected of felony, before he is indicted; and that though the original ſuſpicion be not in himſelf, but in the party that prays his warrant. 2 *H. H.* 107—110.

For the juſtices are judges of the reaſonableneſs of the ſuſpicion, and when they have examined the party accuſing touching the reaſons of his ſuſpicion, if they find the cauſes of ſuſpicion to be reaſonable, it is now become the juſtices ſuſpicion as well as theirs. 2 *H. H.* 80.

And in another place ſpeaking of this opinion or lord *Coke*, he delivers himſelf ſeemingly with a kind of warmth not uſual to him: I think, ſays he, the law is not ſo, and the conſtant practice in all caſes hath obtained againſt it, and it would be pernicious to the kingdom if it ſhould be as lord

Coke

Coke delivers it; for malefactors would eſcape unexamined and undiſcovered, for a man may have a probable and ſtrong preſumption of the guilt of a perſon, whom yet he cannot poſitively ſwear to be guilty. 1 *H. H.* 579.

Mr. *Hawkins* likewiſe ſeems to be of the ſame opinion againſt lord *Coke*, but delivereth himſelf with his wonted caution and candour: It ſeems probable, he ſays, that the practice of juſtices of the peace in relation to this matter, is now become a law, and that a juſtice may juſtify the granting of a warrant for the arreſt of any perſon, upon ſtrong grounds of ſuſpicion, for a felony or other miſdemeanor, before any indictment hath been found againſt him; yet inaſmuch as juſtices claim this power rather by connivance, than any expreſs warrant of law, and ſince the undue execution of it may prove ſo highly prejudicial to the reputation as well as the liberty of the party, a juſtice cannot well be too tender in his proceedings of this kind, and ſeems to be puniſhable not only at the ſuit of the king, but alſo of the party grieved, if he grant any ſuch warrant groundleſly and maliciouſly, without ſuch a probable cauſe as might induce a candid and impartial man to ſuſpect the party to be guilty. 2 *Haw.* 85.

But a general warrant, upon a complaint of a robbery, to apprehend *all perſons ſuſpected*, and to bring them before a juſtice, hath been ruled void; and falſe impriſonment lies againſt him that iſſues ſuch a warrant. 1 *H. H.* 580. 2 *H. H.* 112.

IV. The form of it.

1. Mr. *Dalton* ſays, the warrant is the better, if it bear date of the place where it was made. *Dalt. c.* 169.

And lord *Hale* ſays, the place, though it muſt be alledged in pleading, need not be expreſſed in the warrant. 2 *H. H.* 111.

And Mr. *Hawkins* ſays, It is ſafe, but perhaps not neceſſary, in the body of the warrant to ſhew the place where it was made; yet it ſeems neceſſary to ſet forth the county, in the margin at leaſt, if it be not ſet forth in the body. 2 *Haw.* 85.

2. It may be directed to the ſheriff, bailiff, conſtable, or to any indifferent perſon by name who is no officer; for the juſtice may authorize any one to be his officer, whom he pleaſes to make ſuch; yet it is moſt adviſeable to direct it to the conſtable of the precinct wherein it is

to

to be executed, for that no other conſtable, and *à fortiori* no private perſon, is compellable to ſerve it. 2 *Haw.* 85. *Dalt. c.* 169. 2 *H. H.* 110.

But in the caſe of an act of parliament, it is ſaid, that if the act directeth that a juſtice ſhall grant a warrant, and doth not ſay to whom it ſhall be directed, by conſequence of law it muſt be directed to the conſtable, and it cannot be directed to the ſheriff, unleſs ſuch power is given in the act. *L. Raym.* 1192. 2 *Salk.* 381.

3. The warrant may be ſtiled in divers manners: As 1. In the name of the king; and yet the teſte muſt be under the name of the juſtice that grants it out. Or, 2. It may be ſtiled and made only in the name of the juſtice. Or, 3. It may be made without any ſuch ſtile, and only under the teſte of the juſtice, or only ſubſcribed by him. As followeth:

In the king's majeſty's name.

Weſtmorland. GEORGE *the third, by the grace of God, of* Great Britain, France, *and* Ireland, *king, defender of the faith, and ſo forth; To our ſheriff of the county of* ——— *to the high conſtables of the hundred of* —— *in the ſame county, and to the petty conſtables of the town of* —— *in the ſame county, and to all and ſingular our bailiffs and miniſters in the ſame county, as well within liberties, as without, greeting:*

Foraſmuch as A. I. *of* —— *hath come before* J. P. *eſquire, one of our juſtices aſſigned to keep our peace within the ſaid county, and hath,* &c.

(Concluding it in the juſtice's name, as thus:) *Witneſs the ſaid* J. P. *at* ——— *the* ——*day of* ———.

Note, That whereſoever the warrant is made in the king's name, there it ought to be directed to all miniſters, as well within liberties, as without, for that the king is made a party. And ſo it may be done in all other warrants, eſpecially for felony, or for the peace or the good behaviour, becauſe it is the ſervice of the king. *Dalt. c.* 174.

Or thus, in the name of the juſtice himſelf.

Weſtmorland. J. P. *eſquire, one of the juſtices of our lord the king, aſſigned to keep the peace within the ſaid county; To the ſheriff of the ſaid county, to the*

bailiff or conſtable of the hundred of ——— *within the ſaid county, to the petty conſtables of the town of* ——— *within the ſaid hundred and county, and to all other the miniſters and officers of our ſaid lord the king within the ſaid county, and to every of them, greeting:*

Foraſmuch as, &c. *Given under my hand and ſeal the* —— *day of*, &c. Dalt. c. 174.

4. Regularly, the warrant, eſpecially if it be for the peace or good behaviour, or the like, where ſureties are to be found or required, ought to contain the ſpecial cauſe and matter, whereupon it is grantad, to the intent that the party upon whom it is to be ſerved, may provide his ſureties ready, and take them with him to the juſtice to be bound for him; but if the warrant be for treaſon, murder, or felony, or other capital offence, or for great conſpiracies, rebellious aſſemblies, or the like, it hath been ſaid, that it needeth not to contain any ſpecial cauſe, but the warrant of the juſtice may be to bring the party before him, to make anſwer to ſuch things or matters generally, as ſhall be objected againſt him on the king's behalf. *Dalt. c.* 169. 2 *Haw.* 85. 2 *H. H.* 111.

But Mr. *Lambard* ſays, every warrant made by a juſtice of the peace ought to comprehend the ſpecial matter upon which it proceedeth; even as all the king's writs do bear their proper cauſe in their mouth with them: And as for the form that is commonly uſed, *to anſwer to ſuch things as ſhall be objected*, and ſuch like, they were not fetched out of the old learned precedents, but lately brought in by ſuch as either knew not, or cared not, what they writ. *Lamb.* 87.

5. The warrant ought regularly to mention the name of the party to be attached, and muſt not be left in general, or with blanks to be filled up by the party afterwards. 2 *H.* 114. *Dalt. c.* 169.

6. The warrant may iſſue to bring the party before the juſtice who granted the warrant ſpecially, and then the officer is bound to bring him before the ſame juſtice; but if the warrant be to bring him before any juſtice, then it is in the election of the officer to bring him before what juſtice of the county he thinks fit, and not in the election of the priſoner. 1 *H. H.* 582. 2 *H. H.* 112.

7. It ought to ſet forth the year and day wherein it is made, that in an action brought upon an arreſt by virtue of it, it may appear to have been prior to ſuch arreſt; and alſo, in caſe where a ſtatute directeth the proſecution to be within ſuch a time that it may appear, that the proſecution is com-

commenced with ſuch time limited: Likewiſe, where a penalty is given to the poor of the pariſh where the offence ſhall be committed, or the like, it ought to ſpecify the place where the offence was committed. 2 *Haw.* 85.

8. Finally, it ought to be under the hand and ſeal of the juſtice who makes it out. 2 *Haw.* 85.

The execution of a warrant belongs to title Arreſt.

Watch.

WATCHING is properly intended of the night, and warding for the day time. *Dalt. c.* 104. Watch and ward.

Watches are of three kinds:

1. That which is appointed by the ſtatute of *Wincheſter*, *c.* 4. and is enforced by the 5 *H.* 4. *c.* 3. which is, *That from* Aſcenſion-day *to* Michaelmas, *in every city* 6 *men ſhall keep watch at every gate, in every borough* 12 *men, every town* 6 *or* 4 *according to the number of the inhabitants, and ſhall watch the town continually all night, from the ſun ſetting to the ſun riſing.* 13 Ed. 1. ſt. 2. c. 4. By the ſtatute of Wincheſter.

This watch is to be ſet by the conſtable, and their power is this: *If any ſtranger do paſs by them, he ſhall be arreſted until morning, and if no ſuſpicion be found, he ſhall go quit; and if they find cauſe of ſuſpicion, they ſhall forthwith deliver him to the ſheriff, until he be acquitted in due manner. And if they will not obey the arreſt, they ſhall levy hue and cry upon them.* id.

Inhabitants.] It hath been reſolved, that a ſtranger, who is not an inhabitant, cannot hereby be compelled to keep watch. 2 *Haw.* 80.

Deliver him to the ſheriff.] That is, to the common gaol. 2 *H. H.* 96.

2. But this watch only extends between *Aſcenſion-day* and *Michaelmas*; but there is another watch that may be kept by the conſtable *ex officio*, which may extend to other times; as by the 5 *Ed.* 3. *c.* 14. for night wakers, and perſons ſuſpicions by night or day. 2 *H. H.* 97. By the conſtable.

And although a conſtable is not bound to any preciſe time for this kind of watch, nor puniſhable if he omit it, barely for the omiſſion, if he be ready upon occaſion to do his office when required in theſe caſes; yet it is in his power to hold ſuch watches, as often as he pleaſes, and it is convenient

venient and juſtifiable: and herein the watchmen are the miniſters and aſſiſtants of the conſtable, and are under the ſame protection with him, and may act as he doth. 2 *H. H.* 97.

Yea it is holden, that every private perſon may by the common law arreſt any ſuſpicious night walker, and detain him till he give a good account of himſelf. 2 *Haw.* 80.

By the juſtices.

3. There is alſo another kind of watch, which is by authority of the juſtices of the peace, which alſo may be held at other times than the above ſtatute of the 13 *Ed.* 1. appoints; and the watch thus appointed hath the ſame power as either of the former: And this ſeems to be within the power of any one juſtice, by the firſt aſſignment in the commiſſion; but the ſafer way, and more uſual is, by order of ſeſſions. *Lamb.* 186. 2 *H. H.* 97. *Dalt. c.* 104.

Who ſhall watch.

4. It ſeems to be agreed, that every inhabitant is bound to keep watch in his turn, or to find another. 2 *Haw.* 80.

But they are not compellable to watch at the will of the conſtable, but only when their turn cometh; which was the ancient cuſtom at common law. *Dalt. c.* 104.

And the watching and warding ought to be by men able of body, and ſufficiently weaponed. *Dalt. c.* 104.

And therefore a woman required to watch, may procure one to watch for her. *Comb.* 243.

Perſons taken by watchmen.

5. If a watchman take any one for ſuſpicion of felony, he may inquire of his good name and fame, and if he finds him to be of good name and fame, he may let him go, without being guilty of an eſcape. *Dalt. c.* 159.

And if a perſon will not obey the arreſt of the watchmen, they may levy hue and cry upon him, that he may be taken; or elſe they may juſtify to beat him, for that he reſiſteth the peace and juſtice of the realm; and may alſo ſet him in the ſtocks for the ſame until the morning. *Dalt. c.* 104.

And the watchmen may deliver ſuch perſons to the conſtable, or may convey them to a juſtice, to be examined, and to be bound over or committed, until they be acquitted in due manner. *Dalt. c.* 104.

Indemnity of watchmen.

6. A watchman hath a double protection of the law: 1. As an aſſiſtant to the conſtable, when the conſtable is preſent or in the watch; for ſo every man who is aſſiſting to the conſtable in the execution of his office, hath the ſame protection that the law gives the conſtable. 2. Purely as a watchman ſet by order of law; and the law takes notice of his authority *ſub eo nomine*, and therefore killing of a watchman in execution of his office, is murder. 2 *H. H.* 98. 3 *Inſt.* 52. 9 *Co.* 66.

And

And if a watchman be killed in endeavouring to apprehend a burglar, his executors ſhall be intitled to 40 *l.* reward. 5 *An. c.* 31. *ſ.* 2.

7. If any perſon refuſe to watch in his turn, at the commandment of the conſtable, he may preſent the default at the aſſizes or ſeſſions, or may complain thereof to any juſtice of the peace, who may bind the offender to the good behaviour, and ſo over to the next ſeſſions. *Dalt. c.* 104. And there he may be indicted. 2 *Haw.* 80. Puniſhment for not watching.

But here it is to be noted, that in *Cro. El.* 204. which Mr. *Dalton* cites for his authority in this matter, it is not ſaid, that the juſtice may bind him to the good behaviour, but only thus, ——— that he may inflict puniſhment upon the refuſer.

Warrant for the keeping of watch.

Weſtmorland. { To the conſtable of the hundred of —— in the ſaid county.

AT a general quarter ſeſſions of the peace holden at —— in and for the ſaid county, before us ——— eſquires, juſtices of our lord the king, aſſigned to keep the peace within the ſaid county, and alſo to hear and determine divers felonies, treſpaſſes, and other miſdemeanors in the ſaid county committed, you are hereby required forthwith to iſſue your warrants to the ſeveral petty conſtables within your ſaid hundred, that they do cauſe watch to be kept by night, and ward by day, with able men, within and throughout their reſpective conſtablewicks, from the —— day of ——— now next enſuing, unto the —— day of —— then next following; and that they do apprehend, or cauſe to be apprehended, all rogues, vagabonds, and other wandring, idle, and diſorderly perſons, and carry them before ſome of his majeſty's juſtices of the peace in and for the ſaid county, to be examined and further dealt withal according to law. Given under our hands and ſeals, the day and year firſt above written.

Com-

Commitment of a perſon apprehended by the watch.

Weſtmorland. { To the conſtable —— and to the keeper of the houſe of correction at ——.

WHEREAS A. O. *was yeſterday in the night taken by the watch ſet by the conſtable of — wandring abroad, and lodging in barns, outhouſes, or in the open air, and is this day brought before me* J. P. *eſquire, one of the juſtices of our lord the king aſſigned to keep the peace within the ſaid county, and doth not now give a good account of himſelf before me: Theſe are to require you the ſaid conſtable of ——— to convey the ſaid* A. O. *to the ſaid houſe of correction at ——— aforeſaid, and to deliver him to the keeper thereof, together with this warrant. And I do hereby require you the ſaid keeper of the houſe of correction aforeſaid, to receive the ſaid* A. O. *into your cuſtody in the ſaid houſe of correction, and him there ſafely to keep until the next general quarter ſeſſions of the peace to be holden in and for the ſaid county; and have you him then there, together with this precept. Given under my hand and ſeal, at —— in the ſaid county, the —— day of —— in the —— year of the reign of ——.*

Indictment for not watching.

THE *jurors for our lord the king upon their oath preſent, that* A. O. *of —— in the ſaid county, yeoman, on the ——— day of ——— in the —— year of the reign of —— and long before, and always after unto the day of the taking of this inquiſition, was, and yet is, an inhabitant of the town of ——— aforeſaid, in the county aforeſaid, and that the ſaid* A. O. *then and there, to wit, on the ſaid —— day of —— in the year aforeſaid, at —— aforeſaid, in the county aforeſaid, was duly ſummoned in his turn to watch with the conſtable of ——— aforeſaid, in the night of the ſame day; nevertheleſs the ſaid* A. O. *his duty in that behalf not regarding, did not watch in the ſaid night of the ſame day, in the year aforeſaid, nor in any part of the ſaid night, with the ſaid conſtable at —— aforeſaid, in the county aforeſaid, but did then and there utterly refuſe ſo to do, and wilfully and obſtinately therein did make default; in contempt of our ſaid lord the king, and of his laws, and againſt the peace of our ſaid lord the king, his crown and dignity.*

Watch-

Watchmaking. See **Servants.**

Weights and meaſures.

THE particular weights and meaſures of different ſorts of goods, may be ſeen under their reſpective titles: and what is treated of here, is touching weights and meaſures in general.

I. Of the different kinds of weights and meaſures.
II. Standard of weights and meaſures to be kept in market towns.
III. Mayors and other officers to ſeal and regulate meaſures.
IV. Puniſhment of mayors ard other officers for omitting their duty.

I. Of the different kinds of weights and meaſures.

Divers weights.

1. Notwithſtanding the many ſtatutes which have enacted, that there ſhall be but one weight and one meaſure, throughout the realm, there always have been, and ſtill are two kinds of weights uſed in *England*, and both warrantable; the one by law, and the other by cuſtom; but they are for ſeveral ſorts of wares or commodities: for there is *troy* weight and *averdupois*. *Dalt. c.* 112.

Troy weight.

2. *Troy* weight is by law; and thereby are weighed ſilk, gold, ſilver, pearl, and precious ſtones. And this hath to the pound 12 ounces. *Dalt. c.* 112.

Averdupois weight.

3. *Averdupois* (which in *French* is as much as to ſay to have full weight) is by cuſtom, yet confirmed by ſtatute; and thereby are weighed all kind of grocery wares, drugs, butter, cheeſe, fleſh, wax, pitch, tar, tallow, wool, hemp, flax, iron, ſteel, lead, and all other commodities which bear the name of garble, and whereof iſſueth a refuſe or waſte; (and alſo bread, by the 31 *G.* 2. *c.* 29) And this hath to the pound 16 ounces; and 12 pounds over are allowed to every hundred. *Dalt. c.* 112.

Divers meaſures.

4. And no leſs do the meaſures alſo differ in different places. Thus Mr. *Dalton* obſerves, that the buſhel of corn in one place is greater than in another; and it ſeems, he ſays, that the cuſtom of the place is to be obſerved: Yet he makes a *query* upon it, becauſe it is contrary to the great charter and divers other ſtatutes; and cuſtom or preſcription againſt a ſtatute ſeemeth not good. *Dalt. c.* 112.

II. Standard of weights and meaſures to be kept in market towns.

Standard to be kept in market towns, at which all may weigh.

In every city, borough, and market town, a common balance ſhall be, with common weights ſealed, and according to the ſtandard of the exchequer, upon the common coſts of ſuch city, borough, or market town, in the keeping of the mayor, or conſtable; on pain of 10 *l.* for ſuch city making default, borough 5 *l.* and market town 40 *s.*

At which balance all the inhabitants may freely weigh without any thing paying; taking nevertheleſs of foreigners, for every draught within the weight of 40 *lb.* a farthing, and for every draught betwixt 40 *lb.* and 100 *lb.* an halfpenny, and for every draught betwixt 100 *lb.* and 1000 *lb.* a penny.

And juſtices of the peace, mayors, bailiff, and ſtewards of franchiſes may inquire of offenders againſt this ordinance, and do execution of them that be found faulty. 8 *H.* 6. *c.* 5. 11 *H.* 7. *c.* 4.

III. Mayors and other officers to ſeal and regulate meaſures.

Meaſures to be ſealed.

2. The clerk of the market, and where there is none, the mayor, or head officer, or other perſon having benefit of the market, ſhall cauſe to be ſealed all meaſures duly gauged, by the ſtandard which he ſhall have out of the exchequer. 22 & 23 *C.* 2. *c.* 12. *ſ.* 4.

Fee for the ſame.

2. For which he ſhall be paid, 1 *d.* for the ſealing and marking of a buſhel, an halfpenny for a peck or half peck, and a farthing for a gallon, pottle, quart, pint, or half pint. 22 *C.* 2. *c.* 8. *ſ.* 4.

Penalty of uſing or keeping any falſe.

3. And whoſoever ſhall ſell by any other weight, meaſure. or yard, not according to the ſtandard, or keep any ſuch whereby any thing is bought or ſold, ſhall forfeit 5 *s.* on conviction before one juſtice, or mayor, on oath of one witneſs; to be levied by the churchwardens and overſeers, or ſome of them, to the uſe of the poor, by diſtreſs.

In

In default of diſtreſs, impriſonment till paid 16 *C. c.* 19. *ſ.* 2.

But water meaſure (*viz.* 5 pecks to the buſhel, *Dalt. c.* 112.) in ſea port towns ſhall continue as uſual. *id. ſ.* 7. Except in the meaſuring of corn and ſalt. 22 *C.* 2. *c.* 8. *ſ.* 2.

4. And the mayors, and other head officers in market towns, ſhall twice a year or oftner cauſe all weights and meaſures within the ſame, to be brought before them, and examined; and ſuch as they find defective, to be broken and burnt; and the offender ſhall forfeit to the mayor or other officer, for the firſt time, 6 *s.* 8 *d.* for the ſecond time, 13 *s.* 4 *d.* and the third time, 20 *s.* and be ſet on the pillory: Weights to be examined.

And two juſtices (1 Q.) may hear and determine the defaults of the ſaid mayors or other head officers in that behalf, and alſo of all buyers and ſellers doing contrary hereunto, as well by examination as by inquiry, and ſet fines and amerciaments, and make proceſs thereupon, as if they were indicted before them for breaking of the king's peace. 11 *H.* 7. *c.* 4.

5. Alſo, the conſtable ſhall ſearch, if any perſons uſe any other meaſure than according to the ſtandard; or ſhall ſtrike in any other manner, than even by the wood or brim; or ſhall ſell or buy by a meaſure unſealed; and if he find any unſealed meaſure, he ſhall break the ſame, and ſhall preſent the offenders at the next private or quarterly ſeſſions. 22 *C.* 2. *c.* 8. *ſ.* 6. Conſtables to ſearch.

IV. Puniſhment of mayors and other officers for omitting their duty.

1. If any mayor, lord of the liberty, or other perſon authorized to mark or ſeal meaſures, ſhall neglect or refuſe, being required, to ſeal or mark any buſhel, half buſhel, or peck duly gauged; he ſhall forfeit for the firſt offence 5 *l.* and for every other offence 10 *l.* on conviction by preſentment or indictment at the county ſeſſions; half to the proſecutor, and half to the poor; to be levied by diſtreſs; and for default of diſtreſs, to be impriſoned by warrant of the ſaid juſtices till payment be made. 22 *C.* 2. *c.* 8. *ſ.* 3, 4. Penalty of refuſing to ſeal.

2. Or if he ſhall take more than one penny for the ſealing and marking of a buſhel, or more than a halfpenny for a half buſhel or peck, or more than a farthing for a gallon, pottle, quart, pint, or half pint; he ſhall forfeit 5 *s.* to the poor, on conviction before one juſtice, by the oath of one witneſs; to be levied by the churchwardens or overſeers, by diſtreſs; in default of diſtreſs, impriſonment till paid. 22 *C.* 2. *c.* 8. *ſ.* 4. Penalty on taking more than is due for ſealing.

Penalty of ſuffering other meaſures.

3. And if any mayor or other heap officer, ſhall ſuffer any other meaſure to be uſed than according to the ſtandard, and ſealed; he ſhall forfeit 5 *l.* half to the proſecutor, and half to the poor, on conviction by preſentment or indictment at the county ſeſſions, by diſtreſs: for default of diſtreſs, to be impriſoned by warrant of the juſtices till paid. 22 *C.* 2. *c.* 8. *ſ.* 3.

General penalty for neglect of duty.

4. And generally, by the 16 *C. c.* 19. If any mayor or other officer, or any lords of liberties or their agents, ſhall receive any fines or fees, other than are allowed by ſtatute or cuſtom; or ſhall take any fee for the marking, ſigning, or examination of any weights or meaſures, which have been formerly marked or ſealed; or ſhall impoſe any fine without a due and legal trial of the offence; or ſhall otherwiſe miſdemean himſelf in the execution of his office; he ſhall forfeit to the poor for the firſt offence 5 *l.* for the ſecond 10 *l.* and for the third and every other offence 20 *l.* on conviction before one juſtice, on the oath of one witneſs: to be levied by the churchwardens or overſeers by diſtreſs: for want of diſtreſs, impriſonment till paid. *ſ.* 5.

But after all, notwithſtanding the puniſhments aforeſaid, appointed by ſtatute, for ſelling by falſe weights and meaſures; yet the ſame is alſo an offence at the common law, and conſequently may be puniſhed by indictment, fine, and impriſonment.

Wife.

Woman marrying pending an action.

1. IN the caſe of *King* and his wife againſt *Jones T.* 2. *G.* 2. The plaintiff *Jones* declared againſt *Judith Parnell*, upon ſeveral promiſes. She by the name of *Judith King* appears by attorney, and pleads *non aſſumpſit*. And after a verdict for the plaintiff, ſhe and *Edward King* bring a writ of error, and aſſign for error, that ſhe has appeared and pleaded as a feme ſole, whereas at the time of her appearance and plea ſhe was married to the ſaid *Edward King*. But by the court, This is to abate the plaintiff's writ by the act of the defendant, which was never allowed; we muſt take it, that at the time of bringing the action the defendant was a feme ſole, becauſe they pretend to carry it back no farther than the appearance. And plaintiffs would be in a fine condition, if after they have arreſted a woman, ſhe ſhall be

be allowed to overthrow their proceedings by a ſubſequent marriage. And the judgment was affirmed. *Str.* 811.

2. A wife, or feme covert, is ſo much favoured in reſpect of that power and authority which her huſband has over her, that ſhe ſhall not ſuffer any puniſhment for committing a bare theft, in company with, or by coercion of her huſband. 1 *Haw.* 2. Committing offences with her husband.

But if ſhe commit a theft of her own voluntary act, or by the bare command of her huſband; or be guilty of treaſon, murder, or robbery, in company with, or by coercion of her huſband, ſhe is puniſhable as much as if ſhe were ſole, becauſe of the odiouſneſs and dangerous conſequence of theſe crimes. 1 *Haw.* 2. 1 *H. H.* 47. *Dalt. c.* 157.

And the coercion of the huſband is only a preſumption till the contrary appear; for if upon the evidence it can clearly appear, that the wife was not drawn to it by the huſband, but that ſhe was the principal actor and inciter of it, ſhe ſeems to be guilty as well as the husband. 1 *H. H.* 516.

3. A wife ſhall not be deemed acceſſary to a felony for receiving her husband who has been guilty of it; as her husband ſhall be for receiving her: becauſe ſhe is under the power of her husband, and ſhe is bound to receive him. 1 *Haw.* 2. 1 *H. H.* 47. Acceſſary in receiving her huſband.

4. But a wife may be indicted together with her huſband, and condemned to the pillory with him for keeping a bawdy houſe; for this is an offence as to the government of the houſe, in which the wife has a principal ſhare; and alſo ſuch an offence as may generally be preſumed to be managed by the intrigues of her ſex. 1 *Haw.* 2. Keeping a bawdy houſe.

5. And generally a married woman ſhall anſwer as much as if ſhe were ſole, for any offence not capital, againſt the common law or ſtatute; and if it be of ſuch a nature that it may be committed by her alone, without the concurrence of her husband, ſhe may be puniſhed for it without the huſband by way of indictment; which being a proceeding grounded merely on the breach of the law, the husband ſhall not be included in it for an offence to which he is no way privy. But if a wife incur the forfeiture of a penal ſtatute, the huſband may be made a party to an action or information for the ſame (as he may generally to any ſuit for a cauſe of action given by his wife), and ſhall be liable to anſwer what ſhall be recovered thereupon. 1 *Haw.* 3. Wife to ſuffer corporally; but the huſband to pay the forfeiture.

6. If a wife willingly leave her huſband, and go away, and continue with her advouterer, ſhe ſhall be barred for ever of action to demand her dower. 13 *Ed.* 1. *ſt.* 1. *c.* 34. Eloping.

M. 12 *G. Morris* and *Martin.* Action for meat and other things provided for the defendant's wife. The defendant proved ſhe went away from him with an adulterer. *Raymond* Ch. J. held, that the huſband ſhould not be charged for neceſſaries for her, tho' the plaintiff who provided for her had notice; and he ſaid Ch. J. *Holt* always ruled it ſo. *Str.* 647.

T. 12 *G. Mainwaring* and *Sands.* In an action againſt the huſband for a laced head ſold to the wife, it was proved, that the wife lived from her huſband in adultery, and that ſhe told the plaintiff ſhe had a huſband, but that ſignified nothing, for ſhe would pay him herſelf. *Raymond* Ch. J. held the defendant not chargeable, and ſaid he ſhould have ruled it ſo, if there had been no actual notice, which only ſtrengthened the caſe. *Str.* 706.

T. 4 *G.* 2. *Child* and *Hardyman.* Action for linen ſold to the defendant's wife. Upon *non aſſumpſit*, the delivery was proved. And the defendant proved that ſhe had lived in a very lewd manner; one Mr. *Nott* frequently coming to her at at her huſband's houſe, and they were locked up together in a bed-chamber: and other indecencies paſſed between them. And it was alſo proved, that ſhe ſeveral times went to the houſe of this *Nott*, a gentleman in *Wiltſhire*, who lived within thee miles of the defendant's houſe. It did not appear farther, than that he diſliked her going and ſtaying at Mr. *Nott*'s. But under theſe circumſtances, the huſband and wife continued to live together. Afterwards, ſhe went away from him, and went to *Marlborough*, where ſhe reſided for ſome time; but after the leaving her huſband's houſe, it did not appear that ſhe ever ſaw Mr. *Nott*, or lived in a lewd manner. After ſome time, ſhe ſent *Lucas* an attorney to her huſband, to deſire that he would receive her again; the huſband told him, that if ſhe came again, ſhe ſhould never ſit at the upper end of his table, nor have the government of the children, but ſhould live in a garret. Then *Lucas* propoſed to him, to make her an allowance, and propoſed about 80 or 100 *l.* a year, he being worth about 5 or 600 *l.* a year. But that was not complied with; and afterwards ſhe came to *London*, and bought the linen, to the amount of 53 *l.* By *Raymond* Ch. J. If a woman elopes from her huſband, though ſhe does not go away with an adulterer, or in an adulterous manner; the tradeſman truſts her at his peril, and the huſband is not bound. And this hath been ſo adjudged in two or three caſes. Indeed if he refuſe to receive her again, from that time it may be an anſwer to the elopement. In this caſe he doth not abſolutely

refuſ

refuſe to receive her again; but that ſhe ſhould neither ſit at his table, nor have any government of the children, but ſhould be kept in a garret; and ſhe deſerved no better uſage. And the plaintiff was nonſuit. *Str.* 875.

M. 18. *G.* 2. *Bolton* and *Prentice*. In *aſſumpſit* for goods ſold and delivered to the defendant's wife, the caſe appeared to be, that the defendant and his wife had formerly lodged at the plaintiff's houſe, and the plaintiff furniſhed her with goods; and the defendant finding the plaintiff had helped her to pawn her watch, and ſuſpecting he confederated with her, left the lodgings, after paying the plaintiff his bill, and forbidding him ever truſting her again. After this the defendant and his wife cohabited together for a year; when, without any cauſe appearing, he left her, locked up her cloaths, and upon her finding him out, refuſed to admit her, and ſtruck her, and declared he would not maintain her, or pay any body that did. In this diſtreſs, ſhe borrowed cloaths of her friends, and applied to the plaintiff, who furniſhed her with neceſſaries according to the defendant's degree; which the defendant refuſing to pay for, this action was brought; and upon trial the jury found for the plaintiff. Upon motion for a new trial, the court held the verdict was right; for whilſt they were at the plaintiff's, there was a particular reaſon for the particular prohibition: yet the cauſeleſs turning her away deſtitute afterwards, gave her the general credit again: and if a huſband ſhould be allowed, under the notion of a particular prohibition, to deſtroy her obtaining credit in one place, he may in the ſame manner prevent it with all people ſhe is acquainted with. He appears to be a wrong doer, and therefore has no right to prohibit any body. They diſtinguiſhed this caſe from the caſe of *Manby* and *Scot*, 1 *Sid.* 109. for there the wife was guilty of the firſt wrong in eloping. *Str.* 1214.

Carrying her away with the huſband's goods.

7. Of women carried away (*viz.* violently, or againſt their wills, 2 *Inſt.* 435.) with the goods of their huſbands, the king ſhall have the ſuit for the goods ſo taken away, 13 *Ed.* 1. *ſt.* 1. *c.* 34. That is, it ſhall be felony. And ſo, if any man takes another man's wife, with her huſband's goods, againſt the huſband's will, this is alſo felony. *Dalt. c.* 157.

Wife taking the huſband's goods.

8. But a wife herſelf cannot felonioufly take her huſband's goods; and tho' ſhe ſo takes her huſband's goods; and delivers them to a ſtranger, yet it is no felony in the ſtranger. *H. Pl.* 63. 1 *Haw.* 93.

Guilty of forcible entry.

9. A married woman, by her own act (but not in reſpect of what is done by others at her command, becauſe all ſuch com-

command of hers are void) may commit a forcible entry or detainer; and upon the juſtice's view of the force, ſhe ſhall be impriſoned therefore, and ſhe may be fined in ſuch caſe: but ſuch fine ſet upon the wife, ſhall not be levied upon the huſband; for the huſband ſhall never be charged for the act or default of his wife, but when he is made a party to the action, and judgment given againſt him and his wife. *Dalt. c.* 126. 9 *Co.* 72. 11 *Co.* 61.

Guilty of ſlander, treſpaſs, or aſſault.

10. Likewiſe if ſhe ſhall commit any riot, or do any treſpaſs or other wrong, ſhe is puniſhable for it; and for a treſpaſs done by the wife, or for a ſcandal publiſhed by her, the action lieth againſt both the huſband and wife, and there the huſband is chargeable to the damages or fine, becauſe he is paſty to the action and judgment; but if a wife without her huſband be indicted of a treſpaſs, riot, or any other wrong, there the wife ſhall anſwer, and be party to the judgment only; and in ſuch caſe, the fine ſet upon the wife ſhall not be levied upon the huſband; yet after the huſband's death, ſuch damages or fine ſhall then be levied of the wife herſelf; and as for impriſonment, or other corporal pain, it ſhall be inflicted upon the wife only, and not upon the huſband for his wife's act or default. *Dalt. c.* 139.

M. 19 *G.* 2. *Finch* and his wife againſt *Duddin* and his wife. In an action for a battery of the plaintiff's wife by the defendant's wife, there was judgment for the plaintiffs, and the wife of the defendant was only taken in execution. She moved to be diſcharged, but upon affidavits of endeavours to take the huſband, and it not appearing there was any deſign to ſcreen him, the court refuſed it, on the authority of *Pitt* and *Meller*. *Str.* 1237.

Which caſe of *Pitt* and *Meller*, *T.* 15 *G.* 2. was thus: In trover againſt both, and judgment and execution againſt both; the wife petitioned to be diſcharged out of cuſtody; which the court refuſed, unleſs it could be ſhewn, that there was fraud and colluſion between the plaintiff and the huſband to keep her there. *Str.* 1167.

M. 10 *G. Tarrant* and *Mawr*. The wife libelled in the ſpiritual court for calling her whore, and there being proceedings likewiſe for defamation againſt *her* by the other, the two huſbands enter into an agreement to ſtay proceedings on both ſides: and upon one of the wives going on, the huſband moved for a prohibition; but it was denied: for by the court, the ſuit is by the wife, to recover her fame and it is not in the power of the huſband to reſtrain her. *Str.* 576.

11. If

11. If a woman receive ſtolen goods into her houſe, knowing them ſo to be; or ſhall lock them up in her cheſt or chamber, her huſband not knowing thereof; if her huſband, ſo ſoon as he knoweth thereof, do forthwith forſake his houſe, and her company, and make his abode elſewhere, he ſhall not be charged for her offence; whereas otherwiſe, the law will impute the fault to him, and not to her. *Dalt. c.* 157. Receiving ſtolen goods.

12. A proſecution for conſpiracy is maintainable againſt a huſband and wife only; becauſe they are eſteemed but as one perſon in law, and are preſumed to have but one will. 1 *Haw.* 192. Guilty of conſpiracy with her husband.

13. If a woman who is a ſervant ſhall marry, yet ſhe muſt ſerve out her time, and the huſband cannot take her out of her maſter's ſervice. *Dalt. c.* 58. Woman ſervant marrying.

14. Alſo if a married man and his wife do bind themſelves to ſerve, they ſhall be compelled to ſerve, according to their covenant or agreement. *Dalt. c.* 58. Wife hiring to be a ſervant.

15. If the wife maliciouſly kill her huſband, it is petty treaſon; but if the huſband maliciouſly kill his wife, it is but murder. *Dalt. c.* 142. Killing her huſband, petty treaſon.

16. Huſband and wife cannot be witneſſes for one another; nor regularly againſt one another. 2 *Haw.* 431. Evidence for or againſt her huſband.

17. But a wife may demand ſurety of the peace againſt her huſband threatening to beat her outrageouſly, and a huſband alſo may have it againſt his wife. 1 *Haw.* 127. May demand ſurety of the peace againſt her husband.

And in other criminal caſes, the wife may be a witneſs againſt her huſband, where ſhe is the party grieved; but not in civil caſes. *Dalt. c.* 164.

T. 31 *G.* 2. *Rex v. Earl Ferrers.* An *habeas corpus* was iſſued, commanding *Lawrence* earl *Ferrers*, to bring up the body of his counteſs; that ſhe might receive the protection of the court againſt the ſaid earl, and ſwear the peace againſt him if ſhe ſhould think proper. The earl diſobeying the writ of *habeas corpus*, an attachment was granted againſt him. Upon which he permitted her to come into court, and ſhe exhibited articles of the peace againſt him. And the earl was obliged to enter into recognizance accordingly, himſelf in 5000 *l.* and two ſureties in 2500 *l.* each. *Burrow. Mansfield.* 631.

18. *E.* 31 *G.* 2. *Rex v. Mary Mead.* An *habeas corpus* having iſſued, at the inſtance of *John Wilkes*, eſquire, to bring up the body of *Mary Wilkes*, wife of the ſaid *John Wilkes*, and daughter of the ſaid *Mary Mead*; Mrs. *Mead* now brought her into court. The ſubſtance of the return was, that her huſband (having uſed her very ill) did, in con- Husband and wife agreeing to live ſeparate.

conſideration of a great ſum which ſhe gave him out of her ſeperate eſtate, conſent to her living alone, executed articles of ſeparation, and covenanted (under a large penalty) never to diſturb her or any perſon with whom ſhe ſhould live; that ſhe lived with her mother, at her own earneſt deſire; and that the writ of *habeas corpus* was taken out with a view of ſeizing her by force, or ſome other bad purpoſe. The court held this to be a formal renunciation by the huſband of his marital right to ſeize her or force her back to live with him. And they ſaid, that any attempt of the huſband to ſeize her by force and violence, would be a breach of the peace. They alſo declared, that any attempt made by the huſband to moleſt her in her preſent return from *Weſtminſter-hall*, would be a contempt of the court. And they told the Lady, ſhe was at full liberty to go where, and to whom, ſhe pleaſed. *Burrow. Mansfield* 542.

Cannot be bound by recognizance.

19. A wife cannot be bound herſelf by recognizance, but her ſureties only. *Dalt. c.* 117.

May make a ſurrender.

20. She may ſurrender a leaſe in the court of chancery or exchequer, in order to renew the ſame. 29 *G.* 2. *c.* 31.

Huſbands not liable to the wife's debts after her death.

21. *H.* 1735. In the chancery. *Heard* and *Stamford.* The huſband, as ſuch, is not chargeable in a court of equity, any more than at law, with the debts of his wife after her deceaſe; no, not even tho' he had a large fortune with her: as, on the other hand he is, during the coverture, liable to all her debts, altho' he got nothing with her. *Caſ. Talb.* 173. 3 *Peere Will.* 409.

Windows.

I. Firſt meeting of the commiſſioners, for the iſſuing precepts to return aſſeſſors.

II. Second meeting; charge to the aſſeſſors, with the manner of laying the aſſeſſment.

III. Third meeting; ſigning the aſſeſſment, with warrant to collect.

IV. Fourth meeting; the appeal.

V. Collecting.

VI. Collector paying to the receiver.

VII. Receiver paying into the exchequer.

VIII. Du-

VIII. Duplicate to be tranſmitted into the exchequer.
IX. General penalty on officers not doing their duty.
X. Indemnity of officers in doing their duty.

I. Firſt meeting of the commiſſioners, for the enſuing precepts to return aſſeſſors.

1. COmmiſſioners of the land tax ſhall be commiſſioners for the duties on houſes and windows. 20 *G.* 2. *c.* 2. *ſ.* 6. Commiſſioners of theſe duties.

But no commiſſioner of the land tax ſhall act as commiſſioner of theſe duties, unleſs duly qualified, (that is, unleſs he be taxed at 100 *l.* a year in the county or diviſion, except certain counties in *Wales*, as by the land tax acts) on pain of 20 *l.* to be levied as other penalties bo this act. 21 *G.* 2. *c.* 10. *ſ.* 3.

But they ſhall not be obliged to take the oaths, and ſubſcribe the declaration, and receive the ſacrament, as directed by the 25 *C.* 2. *c.* 2. as other perſons qualifying for offices; but only to take the oaths of allegiance, ſupremacy, and abjuration, as by the land tax acts. 20 *G.* 2. *c.* 3. *ſ.* 27.

2. Which ſaid commiſſioners ſhall meet yearly, at the moſt uſual place of meeting, at ſuch time as ſhall be appointed for the firſt general meeting of the commiſſioners of the land tax, or on ſuch other day as they ſhall think proper, before *April* 30, yearly. 20 *G.* 2. *c.* 3. *ſ.* 6. Time and place of meeting.

3. And at ſuch firſt meeting, they may agree to ſubdivide themſelves, and the other commiſſioners not then preſent, in ſuch manner as to them ſhall ſeem meet. *id. ſ.* 6. Subdividing.

4. Alſo at ſuch firſt meeting, they or the major part of them then preſent, ſhall direct their ſeveral or joint precepts (A) to ſuch inhabitants, and ſuch number of them as they ſhall think moſt convenient, to be preſentors and aſſeſſors, requiring them to appear before the ſaid commiſſioners, at ſuch time and place as they ſhall appoint, not exceeding ten days. 20 *G.* 2. *c.* 3. *ſ.* 18. Precept to return aſſeſſors.

5. But no perſon in a city, borough, or town corporate, ſhall be compelled to be an aſſeſſor or collector out of the limits thereof. 20 *G.* 2. *c.* 3. *ſ.* 18. Aſſeſſors in towns corporate.

6. And the laſt collectors ſhall cauſe a copy of the aſſeſſments given to them, and of the collection made by them, to be fairly written and ſigned by them, but with ſuch alterations therein as ſhall be neceſſary, by reaſon of any new houſes erected, or the number of windows in any houſe increaſed, Collectors to return their laſt collection bills.

creaſed, or by reaſon of the change of inhabitants or occupiers of any houſe, or otherwiſe, or a true duplicate thereof, ſigned as aforeſaid, to be delivered to three or more commiſſioners yearly, within ten days after their firſt meeting. 20 *G.* 2. *c.* 3. *ſ.* 8.

So that it may be moſt proper to direct the precept for the laſt collectors to be aſſeſſors.

Aſſeſſors to take the oaths.

7. And every aſſeſſor, before he acts, ſhall take the oaths required by the 1 *W.* *c.* 18. before three commiſſioners. 20 *G.* 2. *c.* 3. *ſ.* 6.

Which oaths are the oaths of allegiance and ſupremacy.

But quakers, inſtead of ſuch oaths, ſhall be allowed to make and ſubſcribe the declaration of fidelity, preſcribed by the ſaid act of the 1 *W.* *c.* 18. 20 *G.* 2. *c.* 42. *ſ.* 4.

Aſſeſſors refuſing.

8. Aſſeſſors refuſing to take the oaths, or their offices, ſhall forfeit 5 *l.* 20 *G.* 2. *c.* 42. *ſ.* 2. by diſtreſs and ſale, as by the 20 *G.* 2. *c.* 3.

II. Second meeting; charge to the aſſeſſors, with the manner of laying the aſſeſſment.

Charges to the aſſeſſors.

1. The commiſſioners ſhall openly read, or cauſe to be read to the aſſeſſors, the ſeveral rates and duties, and openly declare the effect of their charge unto them, and how they ought to make their aſſeſſments. 20 *G.* 2. *c.* 3. *ſ.* 6.

Duty on houſes.

2. That is to ſay, For every dwelling houſe inhabited, ſhall be paid yearly 3 *s.* 6 *G.* 3. *c.* 38. *ſ.* 2.

Duty on windows.

3. And for every window or light in every dwelling houſe inhabited, an additional yearly ſum as followeth:

7 windows, and no more	——	2 *d.* each.
8	——	6 *d.* each.
9	——	8 *d.* each.
10	——	10 *d.* each.
11	——	0 *d.* each.
12	——	2 *d.* each.
13	——	4 *d.* each.
14, 15, 16, 17, 18, 19	—	6 *d.* each.
20	—	7 *d.* each.
21	—	8 *d.* each.
22	—	9 *d.* each.
23	—	10 *d.* each.
24	——	11 *d.* each.
25 and upwards	——	0 *d.* each.

4. And

4. And every kitchen, ſcullery, buttery, pantry, larder, waſhhouſe, laundry, bakehouſe, brewhouſe, and lodging room, belonging to or occupied with any dwelling houſe, whether joined to it or not, ſhall be deemed part thereof, and the windows therein charged accordingly. 21 *G.* 2 *c.* 10. *ſ.* 1. Unto what windows the ſame ſhall extend.

And ſky lights, and windows or light in ſtaircaſes, garrets, cellers, paſſages, and in all other parts of dwelling houſes, to what uſe ſoever applied, ſhall be charged. *ſ.* 2.

5. And where ſeveral windows are fixed in one frame, if the partition or diviſion between them is of the breadth of 12 inches, the window on each ſide of the partition ſhall be deemed a diſtinct window. 20 *G.* 2. *c.* 3. *ſ.* 38. Several windows in one frame.

6. And all windows in frames which ſhall give light into more rooms than one, ſhall be charged as ſo many ſeparate windows, as there are rooms inlightened thereby. 20 *G.* 2. *c.* 3. *ſ.* 38. Window inlightning two rooms.

7. And no windows or lights ſhall be deemed to be ſtopped up, unleſs it be done effectually with ſtone or brick, or plaiſter upon lath, or upon any other material commonly uſed to plaiſter upon, or with the ſame kind of materials whereof the outſide of the houſe doth chiefly conſiſt. 21 *G.* 2. *c.* 10. *ſ.* 11. Windows ſtopped up.

But this not to extend to windows ſtopped up with any materials, before the year 1746. *ſ.* 12.

And if any occupier ſhall open any windows, after the aſſeſſments are ſettled, and warrants for collecting ſigned, without notice in writing to the ſurveyor, he ſhall forfeit 20*s.* 20 *G.* 2. *c.* 3. *ſ.* 39. by diſtreſs and ſale, *ſ.* 28. half of which fine ſhall go to the informer. 21 *G.* 2. *c.* 10. *ſ.* 15.

8. Where a houſe ſhall be inhabited by two or more perſons or families, it ſhall pay as if it was inhabited by one perſon or family only. 20 *G.* 2. *c.* 3. *ſ.* 31. Two families in one houſe.

9. Where any dwelling houſe is let it different apartments to ſeveral perſons, and the landlord of ſuch houſe pays other taxes and pariſh rates for the ſame; ſuch landlord ſhall be deemed the occupier of ſuch dwelling houſe, and be charged with the duties for the ſame, as an entire houſe. 20 *G.* 2. *c.* 3. *ſ.* 35. Houſe let in different apartments.

10. And the rates ſhall be charged only upon the inhabitants or occupiers, and not on the landlord who let or demiſed the ſame. 20 *G.* 2. *c.* 3. *ſ.* 5. Rates to be charged on the inhabitants.

11. Parents and guardians of infants, on default of payment Infants how chargeable.

ment by ſuch infants, ſhall be liable; and may be proceeded againſt as other perſons making default. *id. ſ.* 15.

Colleges. 12. Each diſtinct chamber in a college or hall in the univerſities, ſhall pay as if it were an entire houſe paying to church and poor. *id. ſ.* 32.

Inns of court. 13. Every edifice in the inns of court or chancery, being ſeverally in the occupation of any perſon, ſhall pay for every window or light; but ſhall not pay the 3*s.* duty on houſes. 20 *G. c.* 3. *ſ.* 33. 21 *G.* 2. *c.* 10. *ſ.* 18, 19.

Cottages. 14. Such dwelling houſes only, where the occupier, by reaſon of poverty only, is exempted from the uſual taxes to church and poor, ſhall be exempted from the duties; and that only in ſuch caſes where the dwelling houſes ſo occupied are cottages, not containing above nine windows in the whole. 20 *G.* 2. *c.* 3. *ſ.* 29.

Houſes left to ſervants. 15. But every houſe whereof the keeping only is committed or left to a perſon or ſervant who pays not to church and poor, ſhall pay as if inhabited by the occupier or tenant. *id. ſ.* 33.

Obſtructing the aſſeſſors. 16. And if any perſon ſhall wilfully obſtruct or moleſt any aſſeſſor in the execution of his duty, he ſhall forfeit 5 *l.* to be levied as the rates and duties. 21 *G.* 2. *c.* 10. *ſ.* 14.

Aſſeſſors to aſſeſs themſelves. 17. And the aſſeſſor ſhall aſſeſs themſelves and the commiſſioners, as other perſons are aſſeſſed. 21 *G.* 2. *c.* 10. *ſ.* 16.

Day for bringing in the aſſeſſments. 18. And the commiſſioners ſhall then and there prefix a day for the perſons to appear before them, and bring in their aſſeſſments in writing under their hands; ſetting forth therein the names and ſurnames of the ſeveral occupiers or inhabitants of each reſpective dwelling houſe chargeable, the number of windows or lights, and the ſeveral ſums they ought to pay. 20 *G.* 2. *c.* 3. *ſ.* 6.

Which day ſhall be on or before *June* 4 yearly. *ſ.* 7. (B)

III. Third meeting; ſigning the aſſeſſment, with warrant to collect.

Aſſeſſment delivered in. 1. The aſſeſſors appearing at the day appointed, ſhall deliver in their aſſeſſments, to be verified upon their oaths, and not otherwiſe. 20 *G.* 2. *c.* 3. *ſ.* 6.

Returning the names of collectors. 2. And ſhall then return the names of two or more able and ſufficicent perſons to be collectors, for whom the pariſh or place ſhall be anſwerable. 20 *G.* 2. *c.* 3. *ſ.* 6.

Signing the aſſeſſment. 3. At which time alſo three or more of the commiſſioners ſhall ſet their hands to the aſſeſſments, teſtifying their allowance thereof. 20 *G.* 2. *c.* 3. *ſ.* 9.

Note;

Note; It is not neceſſary by the words of the act that the ſame ſhall be ſealed.

4. And they ſhall alſo appoint two of the perſons named in the aſſeſſment, or any two others whom they ſhall think able and reſponſible, to be collectors. *id.* (C) Appointing collectors.

5. Alſo on delivery and return of the aſſeſſments, three or more commiſſioners ſhall, at leaſt ten days before the rates ſhall become due, iſſue their warrants or eſtreats under their hands and ſeals, to the collectors, for the ſpeedy collecting and levying the ſame, as they ſhall become due and payable, *id.* *ſ.* 7. Warrant to collect.

And they ſhall forthwith deliver the aſſeſſment ſo allowed of, to the collectors. *ſ.* 9.

6. Collectors refuſing to take their offices, ſhall forfeit 5 *l.* 20 *G.* 2. *c.* 42. *ſ.* 2. by diſtreſs and ſale, as by the 20 *G.* 2. *c.* 3. Collector refuſing to act.

7. Then three or more commiſſioners ſhall alſo give the collectors notice when and where the appeals of any perſons who ſhall think themſelves over rated, may be heard and determined. *id.* *ſ.* 12. Appointing the time for appeal.

And all appeals which ſhall be made between *Mar.* 25. and *Aug.* 20. yearly, ſhall be heard and determined by the commiſſioners upon ſuch days as ſhall be by them appointed between *Aug.* 20. and *Sept.* 15. And all ſuch other appeals as ſhall be made between *Sep.* 29. and *Jan.* 20. yearly, ſhall be heard and determined upon ſuch other days as ſhall be appointed between *Jan.* 20. and *Feb.* 10. 21 *G.* 2. *c.* 10. *ſ.* 7.

8. And where the commiſſioners ſhall have omitted to execute the powers to them given within the time, and according to the manner above preſcribed, two or more of them may meet, and execute the ſame at any other times, as there ſhall be occaſion. 20 *G.* 2. *c.* 42. *ſ.* 1. Remedy where the commiſſioners have omitted their duty.

9. At this third meeting likewiſe comes in the buſineſs of the ſurveyors, who ſhall be appointed by the king, or three commiſſioners of the treaſury: who ſhall appoint them ſuch ſalaries as they ſhall think reaſonable. 20 *G.* 2. *c.* 3. *ſ.* 30, 42, 43. Surveyors to examine and ſurvey.

And they ſhall have power to examine the aſſeſſments, before they are ſigned and allowed by the commiſſioners; and at ſeaſonable times, with a conſtable, to view and examine whether there be any more windows then are aſſeſſed, and to paſs for that purpoſe thro' any houſe, to go into any court, yard, or backſide thereunto belonging, and externally to view the windows which cannot be conveniently

ſeen or numbered without going thro' ſuch houſe: and this they may do twice a year. *id. ſ.* 30.

And the conſtables, and other his majeſty's officers, ſhall be aſſiſting; and ſhall alſo obey and execute the warrants of the commiſſioners to them directed. *id. ſ.* 22.

And if any perſon ſhall wilfully obſtruct or moleſt any ſurveyor in the execution of his duty, he ſhall forfeit 5 *l.* to be levied as the rates and duties. 21 *G.* 2. *c.* 10. *ſ.* 14.

IV. Fourth meeting; the appeal.

Notice of the appeal day to be given in the church.

1. Every collector ſhall, within ten days after notice from the commiſſioners of the time and place of appeal, cauſe public notice to be given in every pariſh church or chapel within his diſtrict, immediately after divine ſervice, on the lord's day (if any ſuch divine ſervice ſhall be performed there within that time) of the time and place ſo appointed by the commiſſioners for hearing and determining appeals: And ſhall alſo on the ſame day, cauſe the like notices to be fixed in writing on the door of ſuch church or chapel. 20 *G.* 2. *c.* 3. *ſ.* 12.

Surveyors to give in his ſurcharge.

2. And after the rates are ſigned and allowed by the commiſſioners, if the ſurveyor finds on his ſurvey, that any houſes or lights have been omitted, or are under rated, he ſhall certify the ſame in writing under his hand, by way of ſurcharge, on or before *Aug.* 10. *and Jan.* 10. yearly, to any three or more commiſſioners, in order to have ſuch omiſſion or under rate certified in the aſſeſſment. 20 *G.* 2. *c.* 3. *ſ.* 37. 21 *G.* 2. *c.* 10. *ſ.* 6.

And he ſhall alſo leave a written notice at the dwelling houſe of every occupier ſo ſurcharged, that he intends to charge them for ſuch number of windows or lights as are charged in ſuch certificate. 21 *G.* 2. *c.* 10. *ſ.* 6.

Notice of appeal.

3. And every perſon intending to appeal ſhall give at leaſt ten days notice thereof in writing to the ſurveyor, or to one or more of the aſſeſſors. 21 *G.* 2. *c.* 10. *ſ.* 8.

Aſſeſſment not to be altered but on a general appeal day.

4. And no aſſeſſment ſhall be altered or diminiſhed, except only on hearing the appeal, upon a general appeal day. 21 *G.* 2. *c.* 10. *ſ.* 5.

Surveyor may be preſent.

5. And the ſurveyor, aſſeſſors, and appellant may be preſent during the time of hearing and determining the appeal, unleſs they miſbehave. 21 *G.* 2. *c.* 10. *ſ.* 8.

Commiſſioner intereſted to withdraw.

6. And in caſe of any controverſy ariſing between the commiſſioners concerning the aſſeſſments, the commiſſioners that ſhall be concerned therein ſhall have no voice, but

ſhall

ſhall withdraw during the debate, until it be determined by the reſt of the commiſſioners. 20 *G.* 2. *c.* 3. *ſ.* 21.

7. The ſurveyor appearing to make good his ſurcharge, ſhall make oath that a written notice was left at the dwelling houſes of the ſeveral occupiers ſo ſurcharged, that he intended ſo to ſurcharge them. 21 *G.* 2. *c.* 10. *ſ.* 6. Surveyor to make oath that he gave notice.

8. At the appeal, the commiſſioners ſhall examine the parties complaining, upon oath, concerning their number of windows or lights. 20 *G.* 2. *c.* 3. *ſ.* 12. The Parties to be examined on oath.

And they ſhall not make any abatement of the charge or ſurcharge, unleſs it doth appear upon oath, that ſuch perſon is over-rated. 21 *G.* 2. *c.* 10. *ſ.* 8.

9. Appeals determined ſhall be final: Except that if the ſurveyor or appellant ſhall then declare himſelf diſſatisfied with the determination of the commiſſioners, they ſhall, at ſuch perſon's requeſt, ſtate ſpecially and ſign the caſe upon which the queſtion aroſe, together with their determination thereupon, and cauſe the ſame to be delivered to the party, to be by him tranſmitted to one of the judges; who ſhall with all convenient ſpeed return an anſwer, with his opinion ſubſcribed; according to which the aſſeſſment ſhall be altered or confirmed; provided that the determination of the commiſſioners ſhall ſtand, with reſpect to the payments which ſhall be due precedent to the opinion upon the caſe certified by the judge. 21 *G.* 2. *c.* 10. *ſ.* 9, 10. How far the appeal determined ſhall be final.

V. Collecting.

1. The collectors ſhall make demand of the parties chargeable, or at the places of their laſt abode, within ten days after the duties ſhall become due and payable. 20 *G.* 2. *c.* 3. *ſ.* 7. Collector to make demand.

2. And on payment thereof, they ſhall give acquittances *gratis*; which ſhall be a full diſcharge to the perſon paying the ſame. *id.* And give receipts.

3. And if any perſon ſhall refuſe to pay to the collector on demand, he may diſtrain ſuch perſon by his goods; and ſhall keep the diſtreſs four days at the owner's coſt; and if not paid in the ſaid four days, then the diſtreſs ſhall be appraiſed by two inhabitants, and there ſold by the officer; the overplus (if any) over and above the charges of taking and keeping the diſtreſs, to be immediately reſtored to the owner. *id. ſ.* 11. May diſtrain.

And where any refuſal, neglect, or reſiſtance ſhall be made, it ſhall be lawful by warrant of three commiſſioners to break open any houſe in the day time, calling in the conſtable to aſſiſt. *id.*

Commitment for want of diſtreſs.

4. And if ſufficient diſtreſs cannot be found, three commiſſioners by their warrant may commit any perſon who ſhall refuſe or neglect to pay for 20 days after demand, to the common *gaol*, until payment ſhall be made. 20 *G.* 2. *c.* 3. *ſ.* 11.

Levying arrears.

5. Arrears may be levied by the commiſſioners in the ſame manner as the rates and duties. 21 *G.* 2. *c.* 10. *ſ.* 17.

Occupier removing.

6. Where the occupier removes without paying the rates, the commiſſioners are to tranſmit a certificate thereof, to the commiſſioners where the perſon reſides; who ſhall cauſe the ſame to be levied and paid to the collectors of the place from whence the perſon did remove. 20 *G.* 2. *c.* 3. *ſ.* 41.

VI. Collector paying to the receiver.

Collector to pay to the receiver.

1. The collectors ſhall pay in the money received, within twenty days after receipt thereof, to the receiver general or his deputy, at ſuch place as the commiſſioners ſhall appoint. 20 *G.* 2. *c.* 3. *ſ.* 7.

Provided that the collectors ſhall not be obliged to travel above ten miles from their habitations, to pay the money collected. *ſ.* 24.

Receiver to give acquittances.

2. Which receiver general ſhall give acquittances *gratis*; which ſhall be a full diſcharge to the collectors. 20 *G.* 2. *c.* 3. *ſ.* 21.

Deputy receiver.

3. And the ſaid receiver general ſhall give notice of his appointment of a deputy (which appointment ſhall be under hand and ſeal) unto three or more commiſſioners, within 20 days after their firſt meeting, and within 20 days after the death or removal of any deputy. 20 *G.* 2. *c.* 3. *ſ.* 23.

Collector to have 3 *d.* a pound.

4. Every collector ſhall have 3*d.* in the pound, for what money he ſhall pay to the receiver general. *id. ſ.* 11.

Collector failing.

5. And if the collector ſhall neglect or refuſe to pay the money by him received, at the time appointed, three or more commiſſioners may impriſon his perſon, and ſeize and ſecure his eſtate as well freehold as copyhold, and all other eſtate both real and perſonal to him belonging, or which ſhall come to his heirs, executors, or adminiſtrators: Which commiſſioners may appoint a time for a general meeting of the commiſſioners, giving publick notice thereof ten days before; and the commiſſioners at ſuch general meeting may ſell ſuch eſtates, or any part of them, for payment. 20 *G.* 2. *c.* 3. *ſ.* 16.

And

And if there be any arrear, by reaſon of the failure of a collector for whom the pariſh or place is anſwerable, three commiſſioners may cauſe it to be reaſſeſſed in ſuch pariſh or place. *id. ſ.* 34.

6. And the collectors ſhall deliver a ſchedule of arrears or the receiver general, to be by him returned into the exchequer, that proceſs againſt the defaulters may be iſſued from thence. 20 *G.* 2. *c.* 3. *ſ.* 21. Returning arrears into the exchequer.

The receiver general returning any perſons in arrear who have paid, ſhall forfeit double damages to the party, and double the ſum to the king. *ſ.* 25.

And no receiver ſhall return any perſon in arrear in his accounts, unleſs ſuch account be paſſed in the exchequer, within two years after the end of the year for which ſuch rate ſhall be payable, but the ſame ſhall be a debt on him and his ſecurities. *ſ.* 26.

VII. Receiver paying into the exchequer.

1. The receiver general ſhall pay the ſum received into the exchequer, by four quarterly payments (*viz. Jan.* 5. *Apr.* 5. *July* 5. and *Oct.* 10.) or in 40 days after the reſpective quarterly pay days; on pain of 500 *l.* to him who ſhall ſue. 20 *G.* 2. *c.* 3. *ſ.* 10. 6 *G.* 3. *c.* 38. *ſ.* 6. Times of paying into the exchequer.

2. And he ſhall have an allowance of 2 *d.* in the pound, for the money he ſhall pay into the exchequer. *ſ.* 11. Receiver's allowance.

VIII. Duplicates to be tranſmitted into the exchequer.

The commiſſioners ſhall cauſe true duplicates of the aſſeſſments to be made out, within three months at fartheſt after *Mar.* 25. yearly; the appeals being firſt heard and determined. Such duplicates to be made for the ſame hundreds, wards, pariſhes, or places, for which diſtinct duplicates are and have been uſually made out for the land-tax; and the names and ſurnames of the aſſeſſors and collectors reſpectively ſhall be inſerted therein. 20 *G.* 2. *c.* 3. *ſ.* 10. Tranſmitting the duplicates.

One of which duplicates ſhall be delivered to the receiver general, and another tranſmitted into the office of the king's remembrancer in the exchequer; for which the proper officers ſhall give acquittances *gratis*. *id.*

All which being done, the commiſſioners clerks, for the careful writing and tranſcribing the aſſeſſments, warrants, eſtreats, and duplicates in due time, ſhall by warrant under

the hands of three commiſſioners, receive 1½ *d.* in the pound, to be paid by the receiver general. *ſ.* 11.

IX. General penalty on officers not doing their duty.

Penalty on the ſurveyor. 1. If any ſurveyor ſhall knowingly, thro' favour or malice, under-rate or over-rate, or omit to charge any perſon liable, or ſhall be guilty of any corrupt or illegal practice in the execution of his office; he ſhall forfeit 100 *l.* and his office. 20 *G. c.* 3. *ſ.* 10.

On the aſſeſſor. 2. Aſſeſſor guilty of concealment or favour in aſſeſſing, ſhall forfeit not exceeding 5 *l.* nor under 40 *s. id. ſ.* 6.

On the collector 3. Collector gathering by a rate not ſigned and allowed by the commiſſioners; or receiving rates from perſons not charged therewith; or collecting from any perſon more than he is charged, and not paying the whole ſum collected; or fraudulently altering any rate after being ſigned by the commiſſioners, ſhall forfeit 20 *l. id. ſ.* 36. by diſtreſs. *ſ.* 28.

In the caſe of *Q.* againſt *Buck* and *Hale*, *M.* 3. *An.* The defendants were indicted and found guilty of a miſdemeanor, for that being aſſeſſors and collectors of the publick taxes of ſuch a pariſh, they aſſeſſed ſome too high, and omitted others in their Books, and yet levied the money on them, and put it into their own pockets. On their coming to receive judgment, it was moved, that no corporal puniſhment might be inflicted, becauſe the crime was not of an infamous nature. But they were adjudged to the pillory in the county were the crime was committed; and that the marſhal ſhould carry them down, and a writ ſhould go to the ſheriff to aſſiſt him in the execution. 6 *Mod.* 306.

On others. 4. Generally; if any aſſeſſor, collector, or other perſon appointed by the commiſſioners, ſhall wilfully neglect or refuſe to perform his duty, three commiſſioners may fine him not exceeding 20 *l.* nor under 5 *l.* to be levied by diſtreſs, and charged amongſt the rates to the receiver general. *id. ſ.* 21.

General method of levying the penalties. 5. And the penalties and forfeitures, for which no other way of levying is preſcribed, ſhall be levied by warrant of three commiſſioners by diſtreſs, rendering the overplus, after deducting reaſonable charges for diſtraning. *id. ſ.* 28.

X. Indemnity of officers in doing their duty.

Treble coſts. Perſons ſued for any thing done in the execution hereof, may plead the general iſſue, and have treble coſts. 20 *G.* 2. *c.* 3. *ſ.* 66. 21 *G.* 2. *c.* 10. *ſ.* 20.

A. Precept

A. Precept to the high conſtables to return aſſeſſors.

Weſtmorland. { To *Henry Holme*, gentleman, high conſtable of the Weſt Ward within the ſaid county.

WE *the commiſſioners of the duties upon houſes and windows for the ſaid county, whoſe names are hereunto ſet, and ſeals affixed, do hereby require you forthwith upon the receipt hereof, to iſſue out your warrants to all the petty conſtables within your ſaid ward, according to the form hereupon indorſed. Given under own hands and ſeals the ——— day of —— in the —— year ———.*

The form of the ſaid warrant to be indorſed.

Weſtmorland, Weſt Ward. { To the conſtable of ——.

BY *virtue of a precept from the commiſſioners of the duties upon houſes and windows for the ſaid county to me directed, you are hereby required forthwith to give notice to the laſt collectors of the ſaid duties within your conſtablewick, that they and every of them do perſonally appear before the ſaid commiſſioners at —— on —— the —— day of ——— at the hour of —— in the forenoon of the ſame day, in order to be appointed aſſeſſors of the ſaid duties, for this preſent year, and at the ſame time to receive their charge, how and in what manner to make their aſſeſſments, and otherwiſe how to proceed in the execution of their ſaid office. And be you then there to certify what you ſhall have done in the execution hereof. Given under my hand the —— day of —— in the year of our lord ———*

Henry Holme, *high conſtable.*

B. Appointment of aſſeſſors, with their charge.

Weſtmorland. WE *the commiſſioners of the duties upon houſes and windows for the ſaid county, whoſe names are hereunto ſet and ſeals affixed, do hereby nominate and appoint ——— to be aſſeſſors of the ſaid duties within the townſhip of ——— in the county aforeſaid. And*

we do hereby require you the ſaid aſſeſſors, to make your aſſeſſment for the ſame, according to the proportions of the laſt aſſeſſment for the ſaid duties within your ſaid townſhip; but with ſuch alterations therein as ſhall be neceſſary by reaſon of any new houſes erected, or the number of windows in any houſe increaſed, or the removal and change of the inhabitants, or otherwiſe. And your ſaid aſſeſſment you are to make out in writing, ſetting forth therein the names of the ſeveral occupiers or inhabitants, the number of windows or lights, and the ſum which they ought to pay; and ſign the ſame; and deliver the ſame to us upon oath at ——— in the county aforeſaid, on ——— the ——— day of ——— in the forenoon of the ſame day, At which time and place you are alſo hereby required to return unto us the names of two or more able and ſufficient inhabitants within your ſaid townſhip, to be collectors of the ſaid aſſeſſment; and in the mean time to give notice unto them, that they do alſo then and there appear, to receive their appointment, nomination, and charge. Given under our hands and ſeals the ——— day of ——— in the year of our lord———

C. Appointment and charge of the collectors, with warrant to collect.

Weſtmorland. *WE the commiſſioners of the duties upon houſes and windows for the ſaid county, whoſe names are hereunto ſet and ſeals affixed, do hereby nominate and appoint ——— to be collectors of the ſaid duties for the townſhip of ——— in the ſaid county, for this preſent year, and do hereby impower them to demand, collect, and receive the ſame. And you the ſaid collectors are hereby required, within ten days after your receipt hereof, to cauſe publick notice to be given in the church or chapel immediately after divine ſervice on the lord's day, and to cauſe the like notice in writing to be affixed on the door of ſuch church or chapel, that all appeals againſt the aſſeſſment for the ſaid duties will be heard and determined by the ſaid commiſſioners at ——— on the ——— day of ———. And if any perſon ſhall neglect or refuſe to pay the ſame unto you upon demand, you are hereby required forthwith to give notice unto us thereof, that ſuch further proceeding may be had therein, as to law doth appertain. And the ſame when collected, you are hereby required to pay unto the receiver general or his deputy, at the times and places hereafter following; that is to ſay, ——— deducting out of the laſt payment thereof* 3 d. *for every pound by you collected, for your*

your trouble in collecting and giving receipts. Given under our hands and ſeals the —— day of —— in the year of our lord ——.

Wine.

1. NO wine (except of the growth of *Tuſcany*, *Turkey*, or the *Levant*) ſhall be imported in flaſks, bottles, or veſſels, leſs than 25 gallons; on pain of forfeiting the ſame, or the value; half to the king, and half to him that ſhall ſeize or ſue by the laws of exciſe, or in the courts at *Weſtminſter*. 1 G 2. *ſt.* 2. *c.* 17. *ſ.* 7, 8. In veſſels of what ſize to be imported.

2. No wine ſhall be brought forth of *France*, but in *Engliſh* ſhipping, on pain of forfeiture. 5 *El. c.* 5. *ſ.* 11. To be imported in Engliſh ſhipping.

And the juſtices in ſeſſions may determine offences againſt this act, by indictment or information. *ſ.* 30.

3. By the 9 *An. c.* 23. a wine licence is directed to be upon a 4*s.* ſtamp. And by the 30 *G.* 2. *c.* 19. a further duty is laid thereon, of 5*l.* for perſons not having either ale or brandy licence; of 4*l.* for perſons having an ale licence, and no brandy licence; and of 40*s.* for perſons having both ale and brandy licence. Licence for retailing foreign wine.

And by the ſame ſtatute of the 30 *G.* 2. *c.* 19. *ſ.* 2. after *July* 5, 1757. no perſon unleſs he be authorized and enabled in the manner herein after preſcribed, ſhall ſell or utter by retail, that is, by the pint, quart, pottle or gallon, or by any other greater or leſs retail meaſure, or in bottles, in any leſs quantity than ſhall be equal to the meaſure of the caſk or veſſel in which the ſame ſhall have been or may lawfully be imported, any kind of wine or liquor called or reputed wine; on pain of 100*l.* half to the king, and half to the informer, to be recovered as the penalties for offences againſt the ſtamp acts. (Provided that the ſaid penalties may be mitigated by the commiſſioners of the ſaid duties as they ſhall think fit: the reaſonable coſts and charges of the officers and informers in the proſecution being always allowed over and above the mitigation. 32 *G.* 2. *c.* 19. *ſ.* 1.)

And two or more commiſſioners of the duties on ſtamped paper or parchment, and no other perſons, ſhall grant licences under their hands and ſeals, to ſuch perſons as they ſhall think fit, to ſell wine by retail as aforeſaid, for one year, from the date of ſuch licences. *ſ.* 3.

Provided, that if the former commiſſioners for wine licences ſhall have granted a licence to any perſon to ſell wine by retail for one year, or for any term not then expired, the perſon ſo licenſed ſhall be enabled to ſell wine by retail for the ſpace of one year from the date of ſuch licence, or until the expiration of the term for which the licence ſhall be granted. *ſ.* 4.

And every perſon who ſhall have ſuch licence ſhall, if he intends to continue, take out a freſh licence ten days at leaſt before the expiration of the former, and in the ſame manner renew the ſame from year to year, paying down the reſpective ſum due for ſuch licences. *ſ.* 5.

And on application for any perſon not reſiding within the bills of mortality, the commiſſioners ſhall cauſe the ſame to be delivered on payment of the duty. *ſ.* 6.

Provided, that nothing herein ſhall be prejudicial to the privileges of the two univerſities. *ſ.* 9.

Nor to the company of vintners in *London*, or to any other city or town corporate; but they may enjoy ſuch privileges as they have heretofore lawfully enjoyed. Provided, that no perſon who ſhall be admitted to the freedom of the ſaid company of vintners by redemption only, ſhall be exempted from taking ſuch licence; but only the freemen of the ſaid company who have been already admitted to their freedom, or who ſhall after the ſaid 5th day of *July* 1757 be admitted to their freedom in right of patrimony or apprenticeſhip, ſhall be intitled to ſuch exemption. *ſ.* 11.

Nor to extend to the mayor and burgeſſes of *St. Albans*, for appointing and licenſing by virtue of their charter three wine taverns for and towards the maintenance of the free ſchool there. *ſ.* 12.

And no perſon ſhall by virtue of one licence keep more than one place, houſe, ſhop, vault, cellar, warehouſe, or other place, for ſelling wine by retail: and every retailer of wine ſhall cauſe the word WINE to be expreſſed in legible characters, either on a ſign hung out, or in ſome viſible place in or near the door, in the front of his houſe, ſhop, vault, cellar, warehouſe, or other place made uſe of for the retailing of wine, to denote that ſuch retailer is a dealer in wine, and liable to take out a licence for the retailing thereof; and if any perſon ſhall ſell wine by retail, without fixing or hanging out ſuch token, he ſhall forfeit 10*l.* to be recovered as the penalty for ſelling wine without licence, ſubject nevertheleſs to the like power of mitigation as above. Provided always, that nothing herein ſhall extend to the univerſities. 32 *G.* 2. *c.* 19. *ſ.* 3, 4.

4. And

4. And by the 31 *G.* 2. *c.* 31. the act of the 30 *G.* 2. *c.* 19. ſhall be extended to ſweets; And no perſon, unleſs he be authoriſed by having taken out ſuch licence as by the ſaid act, ſhall ſell or utter by any retail meaſure, or in bottles, in any quantity leſs than 25 gallons, any kind of liquor made in *Great Britain*, by infuſion, fermentation or otherwiſe, from foreign fruit or ſugar, or from *Britiſh* fruit or ſugar, or from fruit or ſugar mixed with any other ingredients, commonly called *ſweets* or *made wines*; or any kind of liquor made in *Great Britain*, and known by the name of *ſweets* or *made wines*, of whatſoever materials, or in whatſoever manner the ſame may be made; on the like pain of 100 *l.* *ſ.* 7. (And there is no power of mitigating this penalty; which ſeemeth to have been an omiſſion.) Licence for retailing ſweets or made wine.

5. The lord chancellor, lord treaſurer, lord preſident, lord privy ſeal, and the two chief juſtices, or any three of them, ſhall yearly between *Nov.* 20. and *Dec.* 31. ſet the prices of foreign wines ſold in groſs; ſo that proclamation be made thereof in term time in the court of chancery, or in the town where they ſhall be ſold; and if any perſon ſhall offend againſt the ſaid aſſeſſment, he ſhall forfeit for every veſſel 40 *s.* half to the king, and half to the mayor if in a town corporate; and if not, to him that ſhall ſue, 28 *H* 8. *c.* 14. *ſ.* 2, 3. 37 *H.* 8. *c.* 23. *ſ.* 2. 12 *C.* 2. *c.* 25. *ſ.* 13. Setting the prices of wines.

And the juſtices of the peace, and mayors, may hear and determine the defaults of ſuch offenders, and puniſh them by impriſonment, or otherwiſe, by their diſcretions. 28 *H.* 8. *c.* 14. *ſ.* 4.

And by the 37 *H.* 8. *c.* 23. If any perſon ſhall refuſe to ſell at the prices limited, the mayor and recorder and two ancient aldermen in *London*, being no vintners; and the mayor, aldermen, and other head officers elſewhere, or any two of them, whereof the mayor or chief alderman to be one, may enter and ſell the ſame to the owner's uſe. *ſ.* 3.

No perſon ſelling wine ſhall mix wines together, nor with any other thing; on pain that the ſeller in groſs ſhall forfeit 100 *l.* and the retailer 50 *l.* half to the king and half to him that ſhall ſue in any court of record. 12 *C.* 2. *c.* 25. *ſ.* 11. Adulterating wines.

7. By the 5. *An.* *c.* 27. 231 cubical inches ſhall be a wine gallon, 63 gallons a hogſhead, 126 gallons a butt or pipe, and 252 gallons a ton. *ſ.* 17. Wine meaſure.

Wire. See Exciſe.

Witchcraft.

Witchcraft abolished.

1. BY the 9 *G.* 2. *c.* 5. No proſecution, ſuit, or proceeding, ſhall be commenced or carried on againſt any perſon for witchcraft, ſorcery, inchantment, or conjuration, or for charging another with any ſuch offence, in any court whatſoever. *ſ.* 3.

Pretending to witchcraft.

2. But if any perſon ſhall pretend to exerciſe or uſe any kind of witchcraft, ſorcery, inchantment, or conjuration; or undertake to tell fortunes; or pretend from his ſkill or knowledge in any occult or crafty ſcience, to diſcover where, or in what manner, any goods or chattels, ſuppoſed to have been ſtolen or loſt, may be found; every perſon ſo offending, being convicted on indictment or information, ſhall ſuffer impriſonment for a year without bail or mainprize, and once in every quarter of the ſaid year, in ſome market town of the proper county, upon the market day there, ſtand openly on the pillory for one hour, and alſo ſhall (if the court by which ſuch judgment ſhall be given ſhall think fit) be obliged to give ſureties for his good behaviour, in ſuch ſum, and for ſuch time, as the ſaid court ſhall judge proper, according to the circumſtances of the offence, and in ſuch caſe ſhall be further impriſoned until ſuch ſureties ſhall be given. *ſ.* 4.

Witneſſes. See **Evidence.**

Women.

Concerning women conſidered as *wives*, or *femes covert*; ſee title **Wife.**

Concerning women having two huſbands, or men two wives; ſee title **Polygamy.**

Concerning the raviſhment of women: ſee title **Rape.**

For clandeſtine marriages, and counterfeiting marriage licences and regiſters; ſee title **Marriage.**

Carnally knowing a female child under ten.

1. IF any perſon ſhall unlawfully and carnally know and abuſe any woman child under the age of ten years, he ſhall be guilty of felony without benefit of clergy. 18 *El.* *c.* 7.

2. None

2. None ſhall take by force any maiden within age (that is, the age of 12 years, being the age of conſent to marriage, 2 *Inſt.* 182.) by her own conſent nor without; nor any wife or maiden of full age, nor any other woman againſt her will; on pain of impriſonment for two years, and after, fine at the king's will. 3 *Ed.* 1. *c.* 13. Taking a woman by force.

3. If any perſon take by force, or otherwiſe, any woman ſole, having any ſubſtance of lands, tenements, or moveable goods, and inforce her before ſhe be ſet at liberty, to bind herſelf to him by ſtatute or obligation; ſuch bond ſhall be void. 31 *H.* 6. *c.* 9. Forcing her to become bound.

4. Whereas women, as well maidens, as widows, and wives, having ſubſtances, ſome in goods moveable, and ſome in lands and tenements, and ſome being heirs apparent unto their anceſtors, for the lucre of ſuch ſubſtances, are ſometimes taken by miſdoers, contrary to their will, and after married to ſuch miſdoers, or to other by their aſſent, or defiled, — it is enacted, that what perſon that taketh any woman ſo againſt her will unlawfully, that is to ſay, maid, widow, or wife, that ſuch taking, procuring, and abetting to the ſame, and alſo receiving wittingly the ſame woman ſo taken againſt her will, and knowing the ſame, be felony; and that ſuch miſdoers, takers, and procurators to the ſame, and receitors knowing the ſaid offence, ſhall be adjudged as principal felons. 3 *H.* 7. *c.* 2. And by the 39 *El. c.* 9. benefit of clergy is taken away from the principals, procurers, and acceſſaries before. The offence commonly called ſtealing an heireſs.

Upon the face of which ſaid ſtatute of the 3 *H.* 7. theſe things are required to make the offence felony; 1. That the maid, wife, or widow, have lands, or tenements, or moveable goods, or be an heir apparent. 2. That ſhe be taken away againſt her will. 3. That the taking was for lucre. And 4. That ſhe be married to the miſdoer, or to ſome other by his conſent; or be defiled (that is, carnally known.) For if theſe concur not, and be ſo laid in the indictment, the miſdoer is not a felon within this ſtatute, but otherwiſe to be puniſhed. 3 *Inſt.* 61. 1 *Haw.* 110.

The ſaid act makes not only the takers, but the procurers, and abettors of the felony, and receivers of the woman wittingly, knowing the ſame, to be all principal felons; the like whereof lord *Coke* ſays he hath not found in any other ſtatute that he remembers. But by the conſtruction of the common law, they that receive the miſdoers, and not the woman, are acceſſaries only. 3 *Inſt.* 61, 62.

But thoſe who are only privy to the marriage, but no way

way parties to the forcible taking away, or conſenting thereto, are not within the ſtatute. 1 *Haw.* 110.

It is no manner of excuſe, that the woman at firſt was taken away with her own conſent; becauſe if ſhe afterwards refuſe to continue with the offender, and be forced againſt her will, ſhe may from that time as properly be ſaid to be taken againſt her will, as if ſhe had never given any conſent at all; for till the force was put upon her, ſhe was in her own power. 1 *Haw.* 110.

Alſo, it is not material, whether a woman ſo taken contrary to her will, be at laſt married or defiled with her own conſent, or not; if ſhe were under the force at the time. 1 *Haw.* 110.

In *Fullwood's* caſe, *M.* 13 *C.* it was reſolved, that the woman taken away and married, may be ſworn and give evidence againſt the offender, who ſo took and married her, tho' ſhe be his wife *de facto*. 1 *H. H.* 661.

Taking a woman under 16.

5. If any perſon above the age of 14 years, ſhall unlawfully take or convey, or cauſe to be taken or conveyed, any maid or woman child unmarried, being within the age of 16 years, out of the poſſeſſion and againſt the will of her father, or mother, or guardian; he ſhall ſuffer two years impriſonment, or pay ſuch fine as ſhall be aſſeſſed by the court, half to the king, and half to the parties grieved. 4 & 5 *P. & M. c.* 8. *ſ.* 3.

H. 15 *G.* 2. *K.* againſt *Cornforth* and others. The court granted an information againſt the defendants, for taking away a *natural* daughter under 16, under the care of her putative father; being of opinion it was within this ſtatute. *Str.* 1162.

And if any perſon ſhall ſo take away, or cauſe to be taken away, *and deflour*, any ſuch maid or woman child; or ſhall againſt the will or knowledge of the father, or if he is dead, of the mother having tuition of ſuch child, *contract matrimony* with her by letters, meſſages, or otherwiſe; he ſhall be impriſoned for five years, or pay ſuch fine as ſhall be aſſeſſed by the court, half to the king, and half to the parties grieved. *ſ.* 3.

And if any woman child or maiden, being above the age of 12 years, or under 16, ſhall conſent or agree to ſuch perſon ſo making ſuch contract of matrimony; the next of kin to her ſhall have, hold and enjoy her lands during the life of the perſon ſo contracting. *ſ.* 6.

But by the 26 *G.* 2. *c.* 33. No ſuit ſhall be had in any eccleſiaſtical court, in order to compel a celebration of marriage *in facie eccleſiæ*, by reaſon of any contract of matrimony

trimony whatſoever, whether *per verba de præſenti*, or *per verba de futuro*. And the marriage of any perſon under the age of 21, without the conſent of parents or guardians, ſhall be null and void.

6. In an appeal by a woman, the appellee cannot wage battle, but muſt put himſelf upon his country. 2 *Haw.* 427. Appeal by a woman.

7. Peereſſes ſhall be tried as peers, for treaſon or felony. 20 *H.* 6. *c.* 9. Peereſſes how to be tried.

8. Women upon ſtanding mute, are liable to *pain fort & dure*, as men are. 2 *Haw.* 331. Woman ſtanding mute.

9. A woman being convicted for an offence, for which a man may have his clergy, ſhall ſuffer the ſame puniſhment as a man ſhould ſuffer, that has the benefit of his clergy allowed; that is, ſhall be burnt in the hand, and further kept in priſon as the court ſhall think fit, not exceeding one year. 3 *W.* *c.* 9. Benefit of clergy.

But ſhe ſhall have the benefit of the ſaid ſtatute but once. 4 & 5 *W.* *c.* 24. *ſ.* 13.

10. The judgment againſt a woman, in caſe of high treaſon, is not the ſame as againſt a man traytor, to be hanged, cut down alive, have the bowels taken out, and the body quartered; but to be drawn to the place of execution, and there burned: Judgment in treaſon and felony.

And this alſo is the judgement againſt a woman, in caſe of petit treaſon; whereas the judgement againſt a man for petit treaſon is, that he ſhall be hanged:

But in caſe of felony, the judgment is the ſame againſt both man and woman, to be hanged by the neck till dead. 2 *Haw.* 444.

11. It is clear, that if a woman quick with child be condemned either for treaſon or felon, ſhe may alledge her being with child in order to get the execution reſpited, and thereupon the ſheriff ſhall be commanded to take her into a private room, and to impanel a jury of matrons, to try and examine whether ſhe be quick with child or not; and if they find her quick with child, the execution ſhall be reſpited till her delivery. But it is agreed, that a woman cannot demand ſuch reſpite of execution, by reaſon of her being quick with child, more than once. 2 *Haw.* 464. Plea of pregnancy.

12. Women are not obliged to appear at the torn or leet. 2 *Haw.* 57. Attending the torn and leet.

13. Mr. *Hawkins* ſeems to be of opinion, that a cuſtom of the inhabitants ſerving the office of conſtable by turns, is good; and that when it comes to the turn of a woman inhabitant, ſhe muſt procure one to ſerve for her. 2 *Haw.* 63. Serving the office of conſtable.

Pulling down hedges of ground improved.

1. IT is proper to inſert here in the firſt place, a clauſe in the ſtatute of the 13 *Ed.* 1. *ſt. c.* 46. both upon its own account, and its being referred to afterwards by ſubſequent ſtatutes; *viz. Where ſometimes it chanceth, that one having a right to approve, doth then levy a dyke or an hedge, and ſome by night, or at another ſeaſon, when they ſuppoſe not to be eſpied, do overthrow the hedge or dyke, and it cannot be known by verdict of the aſſize or jury, who did overthrow the hedge or dyke, and men of the towns near will not indict ſuch as be guilty of the fact; the towns near adjoining ſhall be diſtrained to levy the hedge or dyke at their own coſt, and to yield damages.*

And by the 3 and 4 Ed. 6. c. 3. *Such perſon as ſhall bring an aſſize hereupon, and have judgement to recover, ſhall have his damages trebled by the judgement of the court.* ſ. 4.

One having a right to approve] Foraſmuch as the lord ought to divide the parts of the common improved, by the hedge, ditch, or other defence; now this clauſe provideth, that if perſons unknown, either in the night or otherwiſe, ſo ſecretly proſtrate the ditches, hedges, or other fences, as the lord cannot know againſt whom to bring his aſſize or other action; and the men of the towns next adjoining thereunto round about do not indict the miſdoers of the fact, thoſe next towns round about ſhall be diſtrained to make the hedge or ditch at their own coſt, and yield damages to the lord. 2 *Inſt.* 476.

Indict] That is, indict him at the king's ſuit, either of a riot, force, or treſpaſs: But here it is demanded, what *time* have the next towns round about adjoining to indict the miſdoers, ſeeing there is no time appointed; and the anſwer is, that ſeeing no time is appointed, the law doth appoint (as in many caſes it doth) a year and a day for the indicting of the miſdoers; and by the indictment the lord ſhall know againſt whom to bring his action. 2 *Inſt.* 476.

The towns near adjoining ſhall be diſtrained to levy the hedge or dyke, at their own coſt, and to yield damages] If the bordering towns do not within a year and a day indict the miſdoers, then ſhall the lord or other party grieved bring his action upon his branch, againſt the towns bordering round about the town wherein the fact was done, and judgement ſhall be given, that they ſhall at their proper coſts make the ditch or hedge, and yield damages; and after judgment given, they ſhall be diſtrained to make the hedge or ditch. 2 *Inſt.* 477.

2. By

2. By the 35 *H.* 8. *c.* 17. intitled, *The bill for the preſervation of woods*, No perſon who ſhall have any woods or underwoods, wherein others have common of paſture, ſhall cut down the ſame, until the fourth part thereof ſhall be ſet out and fenced by the lord with the aſſent of the major part of the tenants; and if they cannot agree, then two juſtices being thereunto appointed by the more number of the juſtices of the ſhire in their quarter ſeſſions, ſhall ſet out the ſame. *ſ.* 7. Cutting down woods wherein there is common of paſture.

3. If any perſon ſhall maliciouſly, willingly, and unlawfully burn, or cauſe to be burned, any heap of wood prepared, cut, and felled, for making of coals, billets, or talwood; or bark any apple trees, pear trees, or other fruit trees; he ſhall forfeit to the party grieved treble damages by action of treſpaſs at the common law, and alſo 10 *l.* to the king. 37 *H.* 8. *c.* 6. *ſ.* 4. Burning coal, wood, barking fruit trees.

4. Every perſon who ſhall rob any orchards or gardens; or break or cut any hedge, pales, rails, or fence; or dig, or pull up, or take up any fruit tree or trees in any orchard, garden, or elſewhere, to the intent to take and carry the ſame away; or ſhall cut or ſpoil any woods or underwoods, poles, or trees ſtanding (the ſame not being felony by the laws of this realm); every ſuch perſon, his procurers and receivers, knowing the ſame, being thereof convicted by confeſſion, or oath of one witneſs, before one juſtice (or mayor) ſhall give to the party ſuch recompence and ſatisfaction for damages, and within ſuch time, as the ſaid juſtice ſhall appoint; and the ſame to be only for the firſt fault: And if ſuch offender ſhall be thought by the juſtice not able, or do not make ſuch recompence, then he ſhall commit him to the conſtable where the offence ſhall be committed, or the party apprehended, to be whipped. And for every ſuch offence for which the offender ſhall be eftſoons committed in form afore limited, the perſon ſo offending to receive the ſaid puniſhment of whipping. 43 *El.* *c.* 7. *ſ.* 1. Robbing orchards, breaking hedges, pulling up fruit trees, ſpoiling wood growing.

And if the conſtable ſhall not by himſelf, or ſome other execute upon the offender the ſaid puniſhment, the juſtice may commit him to the common gaol till he comply. *ſ.* 2.

Rob any orchards] Robbing of orchards doth not ſeem to be comprehended in any other ſtatute, ſo that the puniſhment thereof is reſtrained to this ſtatute: But the other offences above-mentioned are further puniſhable by other ſtatutes hereafter following.

Cut or ſpoil any woods, or underwoods, poles, or trees ſtanding] *E.* 2 *An.* 2. & *Burnaby.* The defendant was convicted

victed upon this ſtatute, for cutting down ſeveral trees called lime trees, and damages given of 20 *l.* It was objected, that the number of the trees ought to have been ſet forth, becauſe this ought to be the meaſure of the damages; and if an action ſhould be brought for the treſpaſs, this conviction cannot be pleaded in bar, for it will not appear that the conviction was for the ſame trees; and therefore the number and quantity ought to be mentioned expreſsly in the conviction, as well as in an action for the treſpaſs. And for this cauſe the court was of opinion that the conviction was ill. *Comyns.* 131.

The ſame not being felony by the laws of this realm] The diſtinction in which caſe ſeemeth to be this: If they be any way annexed to the freehold, as trees growing, or apples growing upon the trees, then the taking and carrying them away is not felony, but only a treſpaſs, for a man cannot ſteal part of the freehold; but if they be ſevered from the freehold, as wood cut, or apples gathered from the trees, then the taking of them is not a treſpaſs only, but felony.

Hedge breaking, and other wood ſtolen.

5. By the 15 *C.* 2. *c.* 2. The conſtable may apprehend, or cauſe to be apprehended, every perſon he ſhall ſuſpect having or carrying any burden of any kind of wood, underwood, poles, or young trees, or bark, or baſt of any trees, or any gates, ſtiles, poſts, pales, rails or hedgewood, broom or furze;———And by warrant of one juſtice (A) directed to any officer, ſuch officer ſhall have power to enter into and ſearch the houſes, outhouſes, yards, gardens, or other places belonging to the houſes of every perſon they ſhall ſuſpect to have any kind of wood, underwood, poles, or young trees, or bark, or baſt of any trees, or any gates, ſtiles, poſts, pales, rails, or hedgewood, broom, or furze; and where they ſhall find any ſuch, to apprehend the perſons ſuſpected for cutting and taking the ſame: And as well thoſe apprehended carrying, as thoſe in whoſe houſes or other places the ſame ſhall be found, to carry before one juſtice. And if ſuch perſon do not then and there give a good account how he came by the ſame, ſuch as ſhall ſatisfy the ſaid juſtice; or elſe ſhall not in ſome convenient time to be ſet by the ſaid juſtice; produce the party of whom he bought the ſame, or ſome credible witneſs to depoſe upon oath ſuch ſale thereof, he ſhall be convicted of cutting and ſpoiling the ſame, and puniſhed as by the ſaid act of the 43 *El.* and further by this act:

That is to ſay, he ſhall for the firſt offence give the owner ſuch recompence or ſatisfaction (B) for damages, and within ſuch time, as the juſtice ſhall appoint; and over and

and above pay down preſently to the overſeers for the uſe of the poor, ſuch ſum not exceeding 10 *s.* as the juſtice ſhall think meet; and if he do not make ſuch recompence, and alſo pay the ſaid ſum to the poor, the ſaid juſtice ſhall commit him (C) to the houſe of correction not exceeding one month, or, to be whipped (D) by the conſtable. And if he ſhall again commit the ſaid offence, and be thereof convicted as before, he ſhall be ſent to the houſe of correction for one month, and be there kept to hard labour. And if he ſhall again commit the ſaid offence, and be thereof convicted as before, he ſhall be deemed an incorrigible rogue.

But no perſon ſhall be puniſhed by this act, unleſs he be queſtioned in ſix weeks after the offence committed.

Buying of ſtolen wood.

6. And by the ſaid act of the 15 *C.* 2. *c.* 2. Whoſoever ſhall buy any burdens of wood, or any poles or ſticks of wood, or any other the premiſſes, which may be juſtly ſuſpected to have been ſtolen or unlawfully come by; one juſtice (on complaint in ſix weeks as aforeſaid after the offence committed) may examine the matter on oath; and if he ſhall find that the ſame was bought of a perſon who might juſtly be ſuſpected to have ſtolen or unlawfully come by the ſame, and that the ſame was ſtolen or unlawfully come by, he may award the party who bought the ſame to pay treble value (E) to him from whom it was unlawfully taken; and in default of preſent payment, may iſſue his warrant to levy the ſame by diſtreſs (F), and in default of diſtreſs, to commit the party to gaol at his own charge, there to remain one month without bail.

Deſtroying nurſeries, timber trees, or other wood growing.

7. By the 1 *G. ſt.* 2. *c.* 48. & 6 *G. c.* 16. If any perſon ſhall either by day or night, cut, take, deſtroy, break, throw down, bark, pluck up, burn, deface, ſpoil, or carry away, any wood ſprings, poles, wood, tops of trees, underwoods or coppice woods, thorns or quickſets, without the conſent of the owner, or of the perſon chiefly intruſted with the care and cuſtody thereof; or ſhall break open, throw down, level or deſtroy any hedges, gates, poſts, ſtiles, railing, walls, fences, dikes, ditches, banks, or other incloſure thereof; the owner may have ſuch ſatisfaction and recompence from the inhabitants of the pariſhes, towns, hamlets, villages, or places, joining on ſuch wood ſprings or wood grounds, and recover ſuch damages againſt ſuch place or places, and in the ſame manner and form as by the (above recited) act of the 13 *Ed.* 1. *ſt.* 1. *c.* 46. Unleſs the offender, by ſuch pariſhes or places, be convicted in ſix months.——This is to be underſtood, if the

Offender is unknown.

But if the offender is known, then it is enacted as follows; *viz.* If any perſon ſhall in a riotous, open, tumultuous, or in a ſecret and clandeſtine manner, forcibly or wrongfully and maliciouſly, and without conſent of the owner, or perſon chiefly intruſted with the care thereof, cut down, deſtroy, break, bark, throw down, burn, take, deface, ſpoil, or carry away, any wood, or ſprings of wood, underwood, or coppice wood; or break open, throw down, level, or deſtroy any hedges, gates, poſts, ſtiles, rails, fences, ditches, banks, or incloſures of ſuch woods, woody grounds, coppices, plantations, timber trees, fruit trees, or other trees, thorns, or quickſets: Two juſtices, or the juſtices in ſeſſions, on complaint made by any inhabitant of ſuch pariſh or place, or by the owner of the wood, or by any other, may cauſe the offender to be apprehended, and hear and determine the offence; and on conviction, ſhall commit (G) the offender to the houſe of correction to hard labour for three months, and where there is no houſe of correction, then to the priſon for four months, and ſhall alſo order the offender to be publickly whipped by the maſter of ſuch houſe of correction once a month, during ſuch three months, if it is in a borough, or in the market town where ſuch houſe of correction ſtands, or in the next market town next adjacent to ſuch houſe of correction, on the market day, between the hours of eleven and two. And where there is no houſe of correction, the ſaid juſtices ſhall order him to be whipped by the common hangman once a month, during ſuch four months, on the market day of ſuch borough, or on the market day of ſome town, between the hours of eleven and two. And before he ſhall be diſcharged, he ſhall find ſufficient ſureties for his good behaviour for two years.

And by the 29 *G.* 2. *c.* 36. *ſ.* 8. If any perſon ſhall unlawfully cut, take, deſtroy, break, throw down, bark, pluck up, burn, deface, ſpoil or carry away, any tree growing in any waſte, wood, or paſture, in which any perſon hath right of common; he ſhall be in like manner convicted, and incur the like penalty, as by the 6 *G.* *c.* 16.

And by the 6 *G.* 3. *c.* 48. Every perſon who ſhall wilfully cut or break down, bark, burn, pluck, up, lop, top, crop, or otherwiſe deface, damage, ſpoil, or deſtroy, or carry away, any *timber* tree or trees, or trees likely to become timber, or any part thereof, or the lops or tops thereof, without the conſent of the owner, (or in any of his Majeſty's foreſts or chaces, without the conſent of the ſurveyor, or his deputy, or perſon intruſted with the care thereof,) and ſhall be thereof convicted, on the oath of one

one witneſs before one juſtice; ſhall, for the firſt offence, forfeit not exceeding 20 *l.* together with the charges previous to and attending ſuch conviction, to be aſcertained by ſuch juſtice; on non-payment thereof, to be committed by ſuch juſtice to the common gaol, for any time not exceeding twelve months, nor leſs than ſix, or until the penalty and charges ſhall be paid: For the ſecond offence, to forfeit not exceeding 30 *l.* together with the charges as aforeſaid; on non-payment, to be committed as aforeſaid, for any time not exceeding eighteen months nor leſs than twelve, or until the penalty and charges ſhall be paid: And if any perſon ſhall be guilty of a like offence a third time, and ſhall be thereof convicted *in like manner* *; he ſhall be deemed guilty of felony, and the court before whom he ſhall be tried ſhall have authority to tranſport him for ſeven years. And all oak, beech, cheſnut, walnut, aſh, elm, cedar, fir, aſp, lime, ſycamore, and birch trees, ſhall be deemed timber trees within the meaning of this act.

And every perſon who ſhall pluck up, ſpoil, or deſtroy, or take, or carry away, any root, ſhrub, or plant, roots, ſhrubs, or plants, out of the fields, *nurſeries*, gardens, or garden grounds, or other cultivated lands, of any perſon, without the conſent of the owner, and ſhall be thereof convicted upon the oath of one witneſs before one juſtice; † ſhall, for the firſt offence, forfeit not exceeding 40 *s.* together with the charges previous to and attending ſuch conviction, to be aſcertained by ſuch juſtice: and if not paid immediately, the ſaid juſtice ſhall commit him to the houſe of correction, for one month, to be kept to hard labour, and once whipped there: For the ſecond offence, ſhall forfeit not exceeding 5 *l.* together with the charges as aforeſaid; if not paid immediately, then to be committed to the houſe of correction for three months, to be kept to hard labour, and whipped there once in every of the ſaid months: And if any perſon ſhall a third time commit the like offence, and ſhall be thereof convicted; he ſhall be

* Here ſeems to be a miſtake. Being convicted in *like manner*, implies a ſummary conviction, as before directed, before one juſtice: But it cannot be intended, that a juſtice ſhall, in this manner, have power to tranſport a man. But the word *court* afterwards, before which he ſhall be convicted, (that is, of aſſize; or *ſeſſions* as it ſeemeth by the following words of the act) implies a legal trial by jury. And therefore theſe words [*in like manner*] ought to be omitted.

† The words in the printed act are (by miſtake of the printer, probably) —*and ſhall be thereof convicted, upon the oath of one or more credible witneſs or witneſſes, before any one or more credible witneſs or witneſſes, before any one or more juſtice or juſtices of the peace.*

deemed guilty of felony, and the court before whom he ſhall be tried ſhall have authority to tranſport him for ſeven years.

And every perſon who ſhall go into the *woods*, underwoods, or wood grounds, of any of his majeſty's ſubjects, not being the lawful owner thereof, and ſhall there cut, lop, top, or ſpoil, ſplit down, or damage, or otherwiſe deſtroy, any kind of wood, or underwood, poles, ſticks of wood, green ſtubs, or young trees, or carry or convey the ſame away; or ſhall have in his cuſtody any kind of wood, underwood, poles, ſticks of wood, green ſtubs, or young trees, and ſhall not give a ſatisfactory account how he came by the ſame; and ſhall be thereof convicted before one juſtice, on the oath of one witneſs; ſhall, for the firſt offence, forfeit not exceeding 40 *s.* together with the charges previous to and attending the conviction, to be aſcertained by ſuch juſtice; and if not paid immediately, the ſaid juſtice ſhall commit him to the houſe of correction, for one month, to be kept to hard labour, and once whipped there: For the ſecond offence, ſhall forfeit not exceeding 5 *l.* together with the charges as aforeſaid; if not paid immediately, then to be committed to the houſe of correction for three months, to be kept to hard labour, and whipped there once in every of the ſaid months: And if any perſon ſhall commit any of the offences aforeſaid a third time; he ſhall, being duly convicted thereof according to law, be deemed an incorrigible rogue, and puniſhed as ſuch; (that is, he may, by the 17 *G.* 2. *c.* 5. *ſ.* 9. be committed by the ſeſſions to the houſe of correction, for any time not exceeding two years, nor leſs than ſix months, to be kept to hard labour, and whipped in ſuch manner, and at ſuch times and places, as they ſhall think fit.

And his majeſty's juſtices of the peace of the reſpective places where any of the ſaid offences ſhall be committed, ſhall put this act in execution.

The ſaid forfeitures to be diſtributed, half to the informer, and half to the perſon aggrieved.

And if any perſon ſhall hinder, or attempt to prevent, the ſeizing or ſecuring any perſon employed in carrying away any ſuch timber or other trees; he ſhall forfeit 10 *l.* to him who ſhall convict ſuch offender: If not paid immediately on conviction, the juſtice before whom he ſhall be convicted ſhall commit him to the houſe of correction to hard labour, not exceeding ſix calendar months.

The

The conviction to be written on parchment or paper, in the following form, or to the like effect:

——— } BE *it be remembered, that on the day of* —— *in*
to wit. } *the year* ——, A. B. *was, upon the complaint of* C. D. *convicted before* ——— *of the juſtices of the peace for* ——, *in purſuance of an act paſſed in the ſixth year of the reign of his majeſty king* George *the third, for* —— (as the caſe ſhall be).

Given under — *hand and ſeal, the day and year above written.*

Which conviction ſhall be certified to the next ſeſſions, there to be filed amongſt the records. And the ſame ſhall not be quaſhed for any want of form; nor be removed by *certiorari*.

Deſtroying timber or other trees, or plants, or ſhrubs, in the night.

8. By the 22 & 23 *C.* 2. *c.* 7. If any perſon ſhall in the night time maliciouſly, unlawfully, and willingly deſtroy any plantations of trees, or throw down any incloſures; he ſhall forfeit to the party grieved, treble damages; and three juſtices (1 *Q.*) may inquire thereof, in ſix months, as well by a jury, as by examination of witneſſes on oath, or by any lawful ways, which to them ſhall ſeem meet. *ſ.* 5, 6, 7.

And by the 6 *G.* 3. *c.* 36. Every perſon who ſhall, in the night time, lop, top, cut down, break, throw down, bark, burn, or otherwiſe ſpoil or deſtroy, or carry away, any oak, beech, aſh, elm, fir, cheſnut, or aſp, timber tree, or other tree, ſtanding for timber, or likely to become timber, without the conſent of the owner thereof; or ſhall, in the night time, pluck up, dig up, break, ſpoil, or deſtroy, or carry away, any root, ſhrub, or plant, roots, ſhrubs, or plants, of the value of 5 *s.* and which ſhall be growing or being in the garden ground, nurſery ground, or other incloſed ground of any perſon; or ſhall be aiding or aſſiſting therein; or ſhall buy or receive ſuch root, ſhrub, or plant, roots, ſhrubs, or plants, of the value aforeſaid, knowing the ſame to be ſtolen; ſhall be guilty of felony, and tranſported for ſeven years.

Setting fire to wood.

6. If any perſon ſhall maliciouſly ſet on fire, or burn, or cauſe to be burnt, any wood, underwood, or coppice, or any part thereof; he ſhall be guilty of felony. 1 *G. ſt.* 2. *c.* 48. *ſ.* 4.

Deſtroying trees, or burning wood by the Black act.

10. By the 9 *G. c.* 22. commonly called the Black Act, If any perſon ſhall unlawfully and maliciouſly cut down, or otherwiſe deſtroy any trees planted in any avenue, or

growing in any garden, orchard, or plantation, for ornament, ſhelter, or profit; or ſet fire to any ſtack of wood; or forcibly reſcue any perſon in cuſtody for any of the ſaid offences; or by promiſe or reward procure any to join him therein; he ſhall be guilty of felony without benefit of clergy. And the hundred ſhall anſwer damages (not exceeding 200 *l.*) as in caſes of robbery by the 27 *El.*

That is to ſay, the party may either take remedy for his damages againſt the hundred by this act; or againſt the pariſh, town, hamlet, vill, or place where the offence was committed, by the aforeſaid acts of the 1 *G. ſt.* 2. *c.* 48. and 6 *G. c.* 16. as to him ſhall ſeem moſt meet. 29 *G.* 2. *c.* 36. *ſ.* 9.

Encouragement of the plantation of wood for relief of the poor.

11. It ſhall be lawful for the king, and all other owners of waſtes, woods, and paſtures, wherein any perſons or bodies politick have common of paſture, with the aſſent of the major part in number and value of the owners and occupiers of tenements to which the right of common of paſture doth belong; and for the major part in number and value of the owners and occupiers of ſuch tenements, with the aſſent of the owner of the ſaid waſtes, woods, and paſtures; and for any other perſon, with the aſſent and grant of the owner of ſuch waſtes, woods, paſtures, and of the major part in number and value of the owners and occupiers of ſuch tenements,—to incloſe and keep in ſeveralty, for the growth and preſervation of timber or underwood, any part of ſuch waſtes, woods, and paſtures, for ſuch time, and in ſuch manner, and upon ſuch conditions, as ſhall be agreed by them reſpectively. 29 *G.* 2. *c.* 36. *ſ.* 1.

And this word *owners* ſhall extend to tenants for life, and for term of years: Provided, that nothing done by ſuch tenants for life or years, ſhall have effect or continuance after determination of ſuch their eſtate. 31 *G.* 2. *c.* 41.

And all bodies politic or corporate, whether agregate or ſole, ſeoffees in truſt, executors, adminiſtrators, guardians, committees, or other truſtees whatſoever, and the huſbands or femes covert, may agree to ſuch incloſure, and ſuch their agreement ſhall be valid. 29 *G.* 2. *c.* 36. *ſ.* 5.

And in caſe the owner of ſuch waſtes, woods, or paſtures, and the major part in number and value of the owners and occupiers of ſuch tenements, ſhall jointly agree to aſſign their right for the purpoſe aforeſaid to any other perſon; and ſuch owner ſhall not have an eſtate in fee ſimple therein, or ſhall be reſtrained from alienating; the recompence to be paid to ſuch owner, ſhall be either by a

grant of a ſhare of the profit from the ſale of ſuch timber or underwood, or by a grant of other lands, or of an annuity or rent charge iſſuing out of the ground ſo incloſed, or out of other lands: ſuch equivalent to be held and enjoyed by the owner of ſuch waſtes, woods, and paſtures, and ſuch as ſhall be intitled to the ſame in reverſion, remainder, or ſucceſſion, in like manner as the eſtate in ſuch woods, waſtes, or paſtures, is limited to be held and enjoyed. *ſ.* 2.

And where any recompence ſhall be agreed to be given for ſuch incloſure to, or to the benefit of, the owners and occupiers of ſuch tenements; it ſhall be made either by a grant of a ſhare of the profit which ſhall ariſe from the ſale of ſuch timber or underwood; or by a grant of other lands; or by ſome annuity or rent charge iſſuing out of the ground ſo incloſed, or out of other lands; or ſhall be paid in money, to be placed out at intereſt on publick ſecurities, or laid out in the purchaſe of lands, or of ſome annuity or rent charge iſſuing out of lands; and the produce thereof until ſuch purchaſe ſhall be made, and alſo every recompence to be made by virtue of the ſaid act of the 29 *G.* 2. ſhall be applied and given to the perſons intereſted in the right of common, in proportion to their reſpective intereſts. 29 *G.* 2. *c.* 36. *ſ.* 2. 31 *G.* 2. *ſ.* 41.

And where the inhabitants of any pariſh or townſhip ſhall be willing to acquire ſuch right of incloſure, for the employment and benefit of their poor, they may (by the conſent and direction of the major part of the inhabitants aſſembled at a veſtry or publick meeting to be held for that purpoſe, publick notice thereof in the church being firſt given on three Sundays before) pay the recompence for the ſame, and the charges of incloſing and preſerving ſuch grounds out of the poor rate; and ſhall apply the profit from the ſale of ſuch timber or underwood, towards the relief of the poor. 29 *G.* 2. *c.* 36. *ſ.* 2. *Note, here is no allowance for the charges of* planting.

And the agreement for ſuch incloſure ſhall be in writing, and ſigned by the parties, and within three months after the execution thereof be inrolled by the clerk of the peace where the greater part of ſuch waſtes, woods, or paſtures ſhall lie. *ſ.* 3.

And perſons aggrieved by ſuch agreement may within ſix months after the inrollment appeal to the ſeſſions, whoſe determination ſhall be final. And if no ſuch appeal ſhall be made, the agreement ſhall be for ever binding. *ſ.* 4.

And if any perſon, after the time limited for ſuch appeal, ſhall either by day or by night unlawfully cut, take, deſtroy, break, throw down, bark, pluck up, burn, deface, ſpoil, or carry away, any trees growing in any ſuch incloſure, without conſent of the owner or owners thereof; ſuch owner ſhall have ſuch remedy, and receive ſuch ſatisfaction and recompence from the inhabitants of ſuch pariſhes, towns, hamlets, villages, or places adjoining to ſuch incloſures, and recover ſuch damage, againſt them, and in the ſame manner and form, as is directed by the aforeſaid act of the 13 *Ed.* 1. *ſt.* 1. *c.* 46. unleſs the offender or offenders ſhall be convicted in ſix months. *ſ.* 6.

And two juſtices, or the juſtices in ſeſſions, on complaint, may cauſe every ſuch offender to be apprehended, and hear and determine the offence, and inflict the like penalty as is directed by the aforeſaid act of the 6 *G.* 2. *c.* 16. *id. ſ.* 7.

Preſervation of wood in foreſts.

12. For the better preventing the deſtruction of timber trees and other trees, underwood, and covert, in foreſts and chaſes; it ſhall be lawful for every ſurveyor of his majeſty's woods, and his lawful deputy, and for the officers and keepers of any foreſt or chaſe, (beſides the penalties for deſtroying the trees or underwood,) to ſeize and take away for his own uſe, any ſaw, axe, hatchet, bill-hook, or other inſtrument, uſed by any perſon whom they ſhall find unlawfully ſtocking up, ſawing, cutting down, topping, lopping, or deſtroying, any timber tree, or other tree, underwood, or covert, within ſuch foreſt or chaſe. 4 *G.* 3. *c.* 31.

Importing wood.

13. By the 5 *G.* 3. *c.* 45. certain premiums are given on the importation of deals, planks, boards, and timber from the colonies in *America*; and if any diſpute ſhall ariſe between the officers of the cuſtoms and the importers, at the port of *London*, as to the quality or condition of the wood or timber, the commiſſioners may call two merchants or others to declare on oath their judgment thereof. And if it be in any of the out-ports; proper deſcriptions of the quality and condition, atteſted by two merchants or other judicious perſons, who ſhall be ſworn thereto by a juſtice of the peace, ſhall be ſent to the ſaid commiſſioners.

Exporting wood.

14. By the 1 & 2 *P.* & *M.* *c.* 5. No perſon ſhall carry any wood out of the realm, on pain that the owner of the ſhip ſhall forfeit the ſhip and tackle; the owner of the wood, double the value of the wood; and the maſter and mariners all their goods, and be impriſoned for a year. *ſ.* 2.

And

And if any perſon ſhall carry any wood to any ſhip, to be tranſported; the owners, maſters, and mariners, ſhall forfeit in like manner. *ſ.* 3.

And if any perſon ſhall obtain of the king a licence to tranſport wood, and ſhall carry more than is contained in his licence; he ſhall forfeit treble value, and be impriſoned for a year. *ſ.* 4.

And they which have licence, ſhall lade all at one place certain; on pain of forfeiting all their goods and chattels. *ſ.* 5.

The ſaid forfeitures to be half to the king and half to him that ſhall ſue in any court of record: Moreover, all and ſingular juſtices of the peace, within three years after any offence committed, may hear and determine the ſame by a jury. *ſ.* 6.

A. Warrant to ſearch for ſtolen wood; on the 15 *C.* 2. *c.* 2.

Weſtmorland. { To the conſtable of ———

WHEREAS A. I. *of* ——— *yeoman, hath this day made oath before me* J. P. *eſquire, one of his majeſty's juſtices of the peace for the ſaid county, that divers quantities of wood, within the ſpace of ſix weeks laſt paſt, have been cut, taken away and carried off and from his lands at* ——— *in the ſame county,* [or as the caſe ſhall be]; *and that he hath juſt cauſe to ſuſpect, and doth ſuſpect, that the ſaid wood, or part thereof, is concealed in the houſes, outhouſes, yards, gardens, or other places belonging to ſuch houſes of* A. O. *of* —— *yeoman, at* ——— *aforeſaid; Theſe are therefore to require you to enter into and ſearch the ſaid houſes, outhouſes, yards, gardens, or other places belonging to ſuch houſes of him the ſaid* A. O. *at* ——— *aforeſaid; and if on ſuch ſearch you ſhall there find any ſuch wood, that then you apprehend the perſon in whoſe houſe, outhouſe, or other place it ſhall be found, and bring him before me, or ſome other of his majeſty's juſtices of the peace for the ſaid county, that ſuch proceedings may be had thereupon as to law doth appertain. Given under my hand and ſeal at* ——— *in the ſaid county, the* — *day of* ——— *in the year* ——.

B. Order

B. Order for ſatisfaction to the owner; on the 15 *C.* 2. *c.* 2.

Weſtmorland. WHEREAS A. I. *of* ——— *in the ſaid county, yeoman, on the* —— *day of* —— *now laſt paſt, did make oath before me* J. P. *eſquire, one of his majeſty's juſtices of the peace for the ſaid county, that on or ſince the* — *day of* —— *now laſt paſt, a certain quantity of wood, the property of him the ſaid* A. I. *at* ——— *in the pariſh of* ——— *in the county aforeſaid, was cut and ſpoiled, and from thence taken and carried away; and that he had juſt cauſe to ſuſpect, and did ſuſpect, that* A. O. *of* ——— *in the ſaid county, yeoman, did cut, ſpoil, take, and carry away the ſame; And whereas the ſaid* A. O. *was on the* — *day of* —— *now laſt paſt, apprehended by* A. C. *conſtable of* ——— *in the ſaid county, carrying wood ſuſpected to be ſtolen by him the ſaid* A. O. [Or, *whereas a certain quantity of wood, to wit* (here ſpecifying the ſame), *ſuſpected to be ſtolen, was this day, by virtue of my warrant for that purpoſe directed to the conſtable of* —— *in the ſaid county, found in the houſe* (or other place) *of the ſaid* A. O. *at* —— *aforeſaid*] *And whereas the ſaid* A. O. *being now brought before me, hath not given to me any ſatisfactory account how he came by the ſaid wood, nor can produce the party of whom he bought the ſame, nor any credible witneſs to teſtify upon oath the ſale thereof; therefore the ſaid* A. O. *is convicted by me of cutting, ſpoiling, taking, and carrying away the ſaid wood; And whereas alſo it is duly proved before me, that* A. I. *of* —— *aforeſaid, yeoman, was and is the owner of the ſaid wood, and that the ſaid offence was committed at* ——— *aforeſaid, in the pariſh of* ——— *in the ſaid county, I do therefore hereby order and appoint the ſaid* A. O. *within the ſpace of* —— *days now next enſuing, to pay unto the ſaid* A. I. *the ſum of* —— *in recompence and ſatisfaction for damages done unto him the ſaid* A. I. *by him the ſaid* A. O. *in cutting, ſpoiling, taking, and carrying away the ſaid wood; and I do alſo hereby order the ſaid* A. O. *within the ſpace of* —— *days now next enſuing as aforeſaid, to pay to the overſeers of the poor of the pariſh of* —— *aforeſaid, for the uſe of the poor of the ſaid pariſh, the ſum of* 10 *s. for his ſaid offence. Given under my hand and ſeal at* ——— *in the ſaid county, the* ——— *day of* ———.

C. Com-

C. Commitment thereupon for non-payment.

Weſtmorland. { To the conſtable of ——— and to the keeper of the houſe of correction at — in the ſaid county.

WHEREAS A. I. *of* —— *in the ſaid county, yeoman, on the* —— *day of* ——— *now laſt paſt, did make oath before me* J. P. *eſquire, one of his majeſty's juſtices of the peace for the ſaid county, that within the ſpace of ſix weeks then laſt paſt, a certain quantity of wood, the property of him the ſaid* A. I. *at* ——— *in the pariſh of* ——— *in the county aforeſaid, was cut and ſpoiled, and from thence taken and carried away; and that he had juſt cauſe to ſuſpect, and did ſuſpect, that* A. O. *of* ——— *in the ſaid county, yeoman, did cut, ſpoil, take, and carry away the ſame; And whereas the ſaid* A. O. *was on the* ——— *day of* —— *now laſt paſt, apprehended by* A. C. *conſtable of* —— *in the ſaid county, carrying wood ſuſpected to be ſtolen by him the ſaid* A. O. [Or *whereas a certain quantity of wood,* (ſpecifying the particulars) *ſuſpected to be ſtolen, was on the* —— *day of* —— *now laſt paſt, by virtue of my warrant for that purpoſe directed to the conſtable of* —— *in the ſaid county, found in the houſe* (or other place) *of the ſaid* A. O. *at* —— *aforeſaid;*] *And whereas the ſaid* A. O. *on the* ——— *day of* — *now laſt paſt having been brought before me, did not and could not give to me any ſatisfactory account how he came by the ſaid wood, nor could produce the party of whom he bought the ſame, nor any credible witneſs to teſtify upon oath the ſale thereof, and thereupon, was by me convicted of cutting and ſpoiling the ſaid wood, and ordered to pay to the ſaid* A. I. *the owner of the ſaid wood, the ſum of* — *within* —— *days then next enſuing, in recompence and ſatisfaction for damages, and alſo the ſum of* 10s. *to the overſeers of the poor of the pariſh of* — *aforeſaid where the ſaid offence was committed, for the uſe of the poor of the ſaid pariſh; And whereas it appears to me, that the ſaid ſeveral ſums have been duly demanded of him the ſaid* A. O. *but that he the ſaid* A. O. *hath refuſed, and doth refuſe to pay, and hath not yet paid the ſame, nor any part thereof: I do therefore hereby require you the ſaid conſtable of* —— *aforeſaid, to convey the ſaid* A. O. *to the ſaid houſe of correction at* — *aforeſaid, and to deliver him to the keeper thereof, together with this warrant. And I do hereby command you the ſaid keeper to receive him into your cuſtody in the ſaid houſe of correction, and*

and there to detain him for the ſpace of ——— *days. Herein fail you not. Given under my hand and ſeal, at* —— *in the ſaid county, the* ——— *day of* ——— *in the* —— *year* ——

D. If inſtead of being ſent to the houſe of correction, he is ordered to be whipt, then ſay, ——— *I do therefore hereby command you the ſaid conſtable forthwith to receive the ſaid* A. O. *into your cuſtody, and to ſtrip him naked from the middle upwards, and whip him until his body be bloody.*

E. Order for the buyer of ſtolen wood, to pay treble damages; on the 15 C. 2. c. 2.

Weſtmorland. WHEREAS *it hath been duly proved before me* ——— *eſquire, one of his majeſty's juſtices of the peace for the ſaid county, that* A. O. *of* ——— *yeoman, did within the ſpace of ſix weeks now laſt paſt, buy ſeveral burdens of wood of* B. O. *of* ——— *yeoman, and that the ſaid* B. O. *is juſtly ſuſpected to have ſtolen the ſame from* A. I. *of* —— *yeoman, and that the ſaid wood, at the time when the ſaid* A. O. *ſo bought the ſame, was of the value of* 10 s. *I do therefore hereby order, that the ſaid* A. O. *do forthwith pay unto the ſaid* A. I. *the ſum of* 30 s. *the ſame being treble value of the ſaid wood ſo by him bought as aforeſaid. Given under my hand and ſeal at* —— *in the ſaid county, the* —— *day of* ——— *in the* —— *year of the reign of* ——.

F. Warrant of diſtreſs for non-payment of the ſame.

Weſtmorland. { ——— Here recite the order —— Then ſay, *And whereas the ſaid* A. O. *hath not paid to the ſaid* A. I. *the aforeſaid ſum of* 30 s. *nor any part thereof; Theſe are therefore to command you to make diſtreſs of the goods and chattels of him the ſaid* A. O. *and if within the ſpace of* [*five*] *days next after ſuch diſtreſs by you made, the ſaid ſum of* —— *together with reaſonable charges of taking and keeping the ſaid diſtreſs, ſhall not be paid, that then you do ſell the ſaid goods and chattels ſo by you diſtrained, and out of the money ariſing by ſuch ſale, pay the ſaid ſum of* —— *unto him the ſaid* A. I. *returning the overplus upon demand,*

unto him the ſaid A. O. *the reaſonable charges of taking, keeping and ſelling the ſaid diſtreſs being thereout firſt deducted. Given,* &c.

G. Commitment for deſtroying trees; on the 1 *G. ſt.* 2. *c.* 48. and 6 *G. c.* 16.

Weſtmorland. { To the conſtable of ——— and to the keeper of the houſe of correction at —— in the ſaid county.

FORASMUCH *as* A. O. *of* —— *in the county aforeſaid, yeoman, is this day duly convicted before us* ——— *eſquires, two of his majeſty's juſtices of the peace for the ſaid county, for that he the ſaid* A. O. *on the* ——— *day of* ——— *now laſt paſt, at* ——— *aforeſaid, in the county aforeſaid, did wrongfully and maliciouſly cut down two aſh trees* [or as the caſe ſhall be], *the property of* A. I. *of* —— *yeoman, without the conſent of him the ſaid* A. I. *the owner thereof, or of any other perſon chiefly intruſted with the care and cuſtody thereof; We do therefore hereby command you the ſaid conſtable, to convey the ſaid* A. O. *to the ſaid houſe of correction at* ——— *aforeſaid, in the county aforeſaid, and to deliver him to the keeper thereof, together with this precept. And we do alſo hereby require you the ſaid keeper of the ſaid houſe of correction, to receive him the ſaid* A. O. *into your cuſtody in the ſaid houſe of correction, and him there keep to hard labour, for the ſpace of three months, now next enſuing, and untill he ſhall find ſufficient ſureties for his good behaviour for two years: And we do likewiſe hereby order you the ſaid keeper of the ſaid houſe of correction, publickly to whip him the ſaid* A. O. *once in every month, during the ſaid three months, in the market town of* —— *in the ſaid county, on the market day there, between the hours of eleven and two. And for ſo doing, this ſhall be your ſufficient warrant. Given under our hands and ſeals, at* ——— *in the ſaid county, the* —— *day of* —— *in the* —— *year* ———.

Wool. See **Woollen manufacture.**

Woollen manufacture.

CONcerning differences between clothiers and their ſervants or workmen, ſee title Servants.

I have nothing to do under this title, but to reduce it into ſome kind of order, out of the confuſion of above an hundred ſtatutes; for, to the honour either of the laws, or of the people, there hath not occurred in all the books, one adjudged caſe, throughout this extenſive title. In truth, it is not the induſtrious labourer, but the idle and profligate, that doth create moſt trouble in the courts of law.

After having premiſed, that in almoſt all the laws hereafter ſpecified under this title, it is enacted, that if any perſon ſhall be ſued for any thing done in putting them in execution, he may plead the general iſſue, and have treble coſts; I ſhall reduce theſe ſtatutes for the encouragement of the woollen manufacture, under the following heads:

I. I ſhall premiſe ſome ſtatutes which are not general enough to be treated of more at large.

II. Concerning the winding of wool by the ſeller.

III. Laws to prevent the exportation of wool from Great Britain, *and of wool and woollen cloth from* Ireland; *and therein alſo of fuller's earth.*

IV. Concerning cards for manufacturing of wool.

V. Concerning the deceitful working of woollen cloth.

VI. Concerning the fulling of cloth.

VII. Concerning the ſearching of cloth, and therein of the length, breadth, and weight thereof.

VIII. Concerning the dying of cloth.

IX. Concerning tenters, and the ſtretching of cloth.

X. Concerning the dreſſing of cloth.

XI. Concerning mixed or medley broad cloth in particular.

XII. Concerning the Yorkſhire *manufacture in particular.*

XIII. Concerning burying of the dead in woollen cloth.

XIV. Againſt importation of woollen cloth.

XV. Encouragement of the exportation of woollen manufactures.

I. Statutes

I. *Statutes not general enough to be treated of more at large.*

7 *Ed.* 4. *c.* 1. Worſted weavers in *Norwich* and *Norfolk.*
12 *H.* 7. *c.* 1. Worſted, ſays, and ſtamins in *Norfolk.*
5 *H.* 8. *c.* 2. White ſtraits in *Devon.*
6 *H.* 8. *c.* 8. Straits in *Devon.*
14 & 15 *H.* 8. *c.* 3. Worſteds in *Yarmouth* and *Lynn.*
14 & 15 *H.* 8. *c.* 11. Veſes in *Suffolk.*
25 *H.* 8. *c.* 18. Clothiers in *Worceſterſhire.*
33 *H.* 8. *c.* 3. Folding of cloths in *North Wales.*
33 *H.* 8. *c.* 16. Worſted yarn in *Norfolk.*
1 *Ed.* 6. *c.* 6. Worſted yarn in *Norfolk.*
5 & 6 *Ed.* 6. *c.* 24. Hats, dornecks, and coverlets in *Norwich* and *Norfolk.*
1 & 2 *P.* & *M.* *c.* 14. Ruſſels ſattens, ſattens reverſes, and fuſtians of *Naples*, in *Norwich.*
2 & 3. *P.* & *M.* *c.* 13. An act for the inhabitants of *Halifax* to buy wools.
1 *El.* *c.* 14. Woollen cloths in divers towns in the county of *Eſſex.*
8 *El.* *c.* 7. Drapers, cottoners and frizers of *Shrewſbury.*
14 *El.* *c.* 12 Drapers, cottoners, and frizers of *Shrewſbury.*
35 *El.* *c.* 10. *Devonſhire* kerſeys or dozens.
12 *C.* 2. *c.* 22. Bay making in the *Dutch* bayhall at *Colcheſter.*
13 & 14 *C.* 2. *c.* 5. Stuffs in *Norfolk* and *Norwich.*
22 & 23 *C.* 2. *c.* 8. *Kidderminſter* ſtuffs.
1 *G.* *ſt.* 2. *c.* 41. Bay making in *Colcheſter.*
9 *G.* *c.* 9. An act for the better qualifying the manufacturers of ſtuffs and yarn in the city of *Norwich*, and liberties thereof, to bear offices of magiſtracy in the ſaid city, and for regulating elections of ſuch officers.
3 *G.* 2. *c.* 8. Regulating elections in *Norwich.*

II. *Concerning the winding of wool by the ſeller.*

1. No man ſhall make any inwinding within the fleece, at the rooling up of his wool; nor put in the ſame, locks, pelt wool, tar, ſtones, ſand, earth, graſs, nor any dirt; and if he do, the party grieved may bring his action at common law of treſpaſs and deceit. 8 *H.* 6. *c.* 22.

2. No perſon ſhall wind any fleece not ſufficiently waſhed, except

except in counties where they do not uſe to waſh ſheep; nor ſhall wind within any fleece, clay, lead, ſtones, ſand, tails, deceitful locks, cot, cals, comber, lamb's wool, or any other thing whereby the fleece may be the more weighty, to the deceit and loſs of the buyer, (except where fleeces are ſold by number, and not by weight;) on pain that the ſeller ſhall forfeit 6*d.* a fleece, half to the king, and half to him that ſhall ſue. 23 *H.* 8. *c.* 17.

III. Laws to prevent the exportation of wool from Great Britain, *and of wool and woollen cloth from* Ireland; *and therein alſo of fuller's earth.*

Several things premiſed.

1. To avoid frequent repetitions under this head, it may be proper to premiſe (once for all) theſe things following:

(1) Notwithſtanding the limitation of actions by the proſecutor in the following ſections, to one year after the offence committed: yet by a general clauſe 9 & 10 *W.* *c.* 40. The king may cauſe perſons guilty of exporting wool, woolfells, fuller's earth, or ſcouring clay, to be proſecuted at any time in three years. *ſ.* 9.

(2) That all actions, ſuits, and informations upon any act for preventing exportation of wool, wool-fells, wool-flocks, mortlings, ſhortlings, worſted, bay, or woollen yarn, cruels, or wool ſlightly manufactured, or matraſſes, or beds ſtuffed with combed wool, or wool fit for combing, fuller's earth, fulling clay, tobacco pipe clay, or any other ſcouring earth or clay, from *Great Britain* or *Ireland*; or for preventing the exportation from *Ireland* into foreign parts, of cloth, ſerges, bays, kerſeys, frizes, druggets, ſhalloons, ſtuffs, cloth ſerges, or any other drapery made of or mixed with wool, manufactured in *Ireland*, ——— may be entered and proſecuted (except as is herein after otherwiſe expreſſed) in any court of record at *Weſtminſter*, or in the court of exchequer in *Scotland*, or at the quarter ſeſſions of the peace, or before any two juſtices out of ſeſſions in a ſummary way, or in *Ireland* by any law relating to the revenue. And if the property be claimed by any perſon, the proof ſhall lie upon him, and not on the officer or ſeizer. 12 *G.* 2. *c.* 21. *ſ.* 18.

Which clauſe hath enlarged this article very much; by bringing in all thoſe ſtatutes, with which the juſtices before had nothing to do.

(3) And if the proſecution is in any court of record at *Weſtminſter*, for any of theſe offences, in or before the ſtatute of the 10 & 11 *W.* *c.* 10. a *capias* ſhall iſſue after the firſt proceſs, ſpecifying the ſum of the penalty ſued for; and

and ſuch perſon ſhall give good bail to the officer ſerving the proceſs, to appear to anſwer to the proſecution; and at the time of appearance ſhall give bail in court, to pay the penalties if convicted, or yield his body to priſon. *ſ.* 20.

And if any perſon ſhall be in priſon for want of bail, for exportation of wool or wool-fells (or for aiding or abetting the ſame, 12 *G.* 2. *c.* 21. *ſ.* 27.) and ſhall refuſe to appear or plead to a declaration or information to be delivered to him or to the gaoler, by the ſpace of one term, judgment ſhall be entered againſt him by default; and if judgment be ſo obtained againſt him by default, (or by verdict or otherwiſe), and he pay not in three months the ſum recovered, the court ſhall order him to be tranſported for ſeven years. 4 *G. c.* 11. *ſ.* 6.

(4) And to prevent colluſive ſeizures, or fraudulent agreements to evade the penalties, None but officers of the cuſtoms, exciſe, or ſalt, except the officers of the guard ſhips hereafter mentioned, ſhall enter informations of ſeizures of wool or woollen goods; which ſhall be proſecuted in their, or in the attorney general's name, and not otherwiſe. 12 *G.* 2. *c.* 21. *ſ.* 14, 15.

And if ſuch officer make any ſuch colluſive ſeizure, or fraudulent agreement, he ſhall forfeit 200 *l.* and be diſqualified for any office in the revenue; and the owner making ſuch agreement with him, ſhall forfeit treble value; to him who ſhall ſue in the courts at *Weſtminſter*, *Dublin*, or *Edinburgh*. id. *ſ.* 16.

But if any perſon concerned in ſuch fraudulent ſeizure or agreement, ſhall firſt (in three months) diſcover his offence to the commiſſioners of the cuſtoms, ſo that one accomplice be convicted; he ſhall be diſcharged of the penalties, and ſhall have the whole money recovered on the conviction (the charges firſt deducted). *ſ.* 17.

And if any perſon ſhall oppoſe or hinder any the ſaid officers, or their aſſiſtants, in ſeizing any the goods before mentioned; or if any perſon armed, or diſguiſed, ſhall attempt to reſcue any the ſaid goods ſeized; he ſhall be tranſported for ſeven years. *ſ.* 26.

And moreover, if any perſon offer a bribe to any officer for connivance, he ſhall forfeit 300 *l.* to him who ſhall ſue in any court of record. *ſ.* 25.

(5) On condemnation of any wool, or other goods above mentioned, the commiſſioners of the cuſtoms reſpectively ſhall cauſe them to be publickly ſold to the beſt bidder, where they ſhall think proper; and out of the produce of ſuch ſale, ſhall cauſe the charges of condemnation and ſale

to be paid, and the remainder to such person who shall seize, inform or sue. 12 *G.* 2. *c.* 21. *s.* 20.

But if the officers shall receive information from any person, whereby any seizure is made, or any prosecution effected; such informer shall have half of what shall be recovered. *s.* 21.

And if any person convicted in the penalty of 3*s.* a pound (hereafter mentioned) be not able to pay; the commissioners may cause 1 *s.* a pound to be paid to the informer or prosecutor, by the receiver of the revenue. *s.* 22.

And for the prosecutor's further encouragement, by the 19 *G.* 2. *c.* 34, hereafter following, If on an information for seizure of wool (during the continuance of the said act) a verdict is found for the claimer; yet if the judge shall certify upon the record, that there was probable cause of seizure, the claimer shall have no costs. *s.* 16.

Exporting of wool, felony.

2. By the 13 & 14 *C.* 2. *c.* 18. The exportation of wool was made felony; but this was repealed by the 7 & 8 *W.* *c.* 28. and the preamble to the repealing clauses sets forth, that by the severity of the penalty, the prosecution of offenders had not been so effectually put in execution. But it doth not appear, why a reward for the informer or prosecutor was not thought of at that time.

Pecuniary and other penalties and forfeitures.

3. By the 12 *G.* 2. *c.* 32. No person shall export, nor pack or load upon any horse, cart, or carriage, nor lay on board, with intent to export any wool, wool fells, mortlings, shortlings, or any yarn made of wool, or any wool flocks, or any fuller's earth, or fulling clay; on pain of forfeiting the same, and that every offender shall forfeit moreover 3*s.* for every pound weight thereof. *s.* 1, 3.

(By the 7 & 8 *W.* *c.* 28. which, by the way, is a confused and ill penned act, another penalty is appointed, to wit, the forfeiture of such goods, and treble value, with treble costs; so that it seemeth, the offender may be prosecuted either for the wool and 3*s.* a pound, or for treble value with treble costs.)

And the owner of the ship, knowing the offence, shall forfeit all his interest in the ship and furniture. 12 *C.* 2. *c.* 32. *s.* 3. 7 & 8 *W.* *c.* 28. *s.* 8.

And the master and mariners, knowing the offence, and assisting thereunto, shall forfeit all their goods and chattels, and be imprisoned three months. 12 *C.* 2. *c.* 32. *s.* 3.

And by the 6 *G.* *c.* 21. If the master, purser, or other person taking charge of the ship, shall suffer any of the said goods, or any tobacco pipe clay, to be taken in from shore,

to

to be carried beyond ſea; he ſhall, beſides any former penalties, be impriſoned ſix months. *ſ.* 32.

But if any maſter, mate, or mariner, ſhall in ſix months give an account to the commiſſioners of the cuſtoms, of ſuch ſhip, and goods, and offenders, ſo as any may be convicted; he ſhall be indemnified, and ſhall have moreover three fourths of the penalties recovered, clear of charges and the king ſhall have the other fourth, charges deducted. 11 *G.* 2. *c.* 21. *ſ.* 23.

And any merchant, or other perſon, offending herein, ſhall be diſabled to require any debt or account belonging to him from any factor or other. 12 *C.* 2. *c.* 32. *ſ.* 4.

And the ſaid offences may be tried either in the county where the goods were packed, loaden, or laid abroad, or where the offender is apprehended. 12 *G.* 2. *c.* 32. *ſ.* 5.

And the ſhip, if an alien, or perſon not inhabiting in *England*, be the owner or part owner thereof, ſhall be forfeited to the king. 12 *C.* 2. *c.* 32. *ſ.* 9.

And all perſons aiding or aſſiſting therein, being convicted in one year, ſhall ſuffer three years impriſonment, 7 & 8 *W.* *c.* 28. *ſ.* 10, 11. Provided, that the firſt three perſons, who have been aiding or aſſiſting (not being owners or part owners thereof) who ſhall inform any juſtice of the peace of ſuch offence, whereby the penalties may be recovered, ſhall not ſuffer ſuch penalty. *ſ.* 11.

And moreover, all ſuch exportation ſhall be deemed a publick nuſance. 13 & 14 *C.* 2. *c.* 18. *ſ.* 11.

Exporting wool ſlightly wrought.

4. And no coverlids, waddings, or other manufactures, ſlightly wrought, ſo as they may be reduced to wool again; or mattraſſes or beds ſtuffed with combed wool, or wool fit for combing, ſhall be exported from *Great Britain* or *Ireland*: on the like pain as for exporting wool. 12 *G.* 2. *c.* 21. *ſ.* 9.

Exporting fullers earth in the name of tobacco pipe clay.

5. And whereas fuller's earth or fulling clay, is exported under colour of tobacco pipe clay; therefore no tobacco pipe clay ſhall be exported, on pain of 3 *s.* a pound. 13 & 14 *C.* 2. 18. *ſ.* 8.

Exporting fuller's earth to Ireland.

6. Nor ſhall any fuller's earth, or ſcouring clay, be exported into *Ireland*, on pain of 1 *s.* a pound. 9 & 10 *W.* *c.* 40. *ſ.* 2.

Exporting wool to Jerſey, Guernſey, &c.

7. Nevertheleſs, wool may be exported from *Southampton*, to *Jerſey*, *Guernſey*, *Sark*, and *Alderney*, for the ſole uſe of the inhabitants there; ſo as the perſon ſhipping the ſame deliver to the cuſtomer of the port, a writing under the ſeal of the governor of the iſland, or his deputy, ſetting forth that ſuch perſon is authorized to export thither ſuch a quan-

tity, and that he hath entred into bond to land it there; and ſo as it exceed not in one year to *Jerſey* 4000 tods, *Guernſey* 2000, *Alderney* 400, and *Sark* 400; every tod not exceeding 32 pounds. 12 *C.* 2. *c.* 32. *ſ.* 12, 13, 14. 1 *W.* *c.* 32. *ſ.* 14.

Packing of wool.

8. And no wool, wool fells, mortlings, ſhortlings, wool flocks, worſted, bay or woollen yarn, ſhall be packed up in any box, barrel, caſk, caſe, cheſt, or any other package, but only in packs of leather or packcloth; on which ſhall be marked on the outſide the words WOOL or YARN, in large letters not leſs than three inches long; on pain of forfeiting the ſame, and the package, and 3*s.* for every pound weight, to be paid by the owner or packer. 12 *G.* 2. *c.* 21. *ſ.* 10.

To be carried only by day.

9. And no wool, wool fells, mortlings, ſhortlings, woollen yarn, wool flocks, fuller's earth, fulling clay, or tobacco pipe clay, ſhall be carried by land, but in the day time only namely, from *Mar.* 1. to *Sept.* 29. between four in the morning, and eight at night; and from *Sept.* 29. to *Mar.* 1. between ſeven in the morning, and five at night; on pain of forfeiting the ſame or the value. 13 & 14 *C.* 2. *c.* 18. *ſ.* 9.

Carrying wood from port to port, or by land near the coſt.

10. Every owner of wool, who ſhall carry, or cauſe to be carried any wool, (wood fells, mortlings, ſhortlings, yarn made of wool, wool flocks, fuller's earth, fulling clay, or tobacco pipe clay, 5 *G.* *c.* 11. *ſ.* 14.) to any port or place on the ſea coaſt, with intention to convey the ſame to any other port or place on the coaſt, from whence the ſame may be carried off to foreign parts; ſhall firſt cauſe an entry thereof to be made at the port, from whence it is intended to be conveyed, containing the weight, mark, and number, before he carry the ſame within five miles of ſuch port; on pain of forfeiting the ſame and alſo the horſes, carts, and other carriages; and alſo of ſuffering and forfeiting, as by the other laws in force againſt the exportation of wool. 1 *W.* *c.* 32. *ſ.* 2.—But this ſhall not hinder any perſon from carrying his wool home from the place of ſhearing, though it be within five miles of the ſea; provided that in ten days after ſhearing, and before he remove the wool, he do under his hand certify to the next officer of the cuſtoms, the true number of fleeces, and where it is houſed; and do not remove the ſame, without certifying to ſuch officer, under his hand, his intention ſo to do, three days before. 1 *W.* *c.* 32. *ſ.* 3.

And no wool, woolfells, mortlings, ſhortlings, wool flocks, worſted, bay or woollen yarn, worſted yarn, cruels, or wool

ſlight-

ſlightly manufactured, ſhall be put on board any veſſel, to be carried coaſtwiſe, or from one port to another in *Great Britain* or *Ireland*, without notice given to the officers of the port, and bond given for the landing thereof, and a licence taken from ſuch officers for ſo doing; on pain of forfeiting the ſame, with the veſſel and furniture; and the bond to be ſued, if a certificrte of landing the goods is not brought in ſix months. 12 *G.* 2. *c.* 21. *ſ.* 11.

And to prevent colluſive landing, none of the ſaid goods, carried coaſtwiſe, ſhall be landed but in preſence of the officers, and at the proper quays; on pain of forfeiting the ſame, or the value, and 3 *s.* for every pound, to be paid by the owner. *id. ſ.* 13.

And all cocquets, for carrying wool from any port, ſhall be written on paper, and not parchment (to prevent the eraſing), and ſigned by three officers of the port; and all certificates of landing the ſame again in any other port, ſhall be ſigned in like manner: And all ſuch wool, both at ſhipping and landing, ſhall be weighed in the preſence of the ſaid officers; and the weight, marks, and number of ſuch wool ſo ſhipped and landed, ſhall be expreſſed both in the coquet and certificate. 1 *W.* *c.* 32. *ſ.* 4.

And a regiſter ſhall be kept at the cuſtom houſe, *London*, of all the wool ſent from port to port in this kingdom, the weight, number, ſhip, maſter's name, owner's name, and to whom conſigned; for the uſe of the commiſſioners. 1 *W.* *c.* 32. *ſ.* 11.

And officers not obſerving the directions of this act, ſhall be deemed abettors of the exportation, *id. ſ.* 5.

In Kent and Suſſex: Every owner of wool, within ten miles of the ſea, ſhall give an account in writing, in three days after ſhearing, of his number of fleeces, and where lodged, to the next officer of the cuſtoms; and the like notice, before he remove any part thereof, of the number of fleeces and weight, and the name and abode of the perſon to whom it is diſpoſed, and the place whither intended to be carried; and ſhall take a certificate from the officer who firſt entered the ſame (paying 6 *d.*); on pain of forfeiting the wool, and alſo 3 *s.* for every pound thereof, as if it had been actually exported. 9 & 10 *W.* *c.* 40. *ſ.* 3.—And no perſon within 15 miles of the ſea, in the ſaid counties, ſhall buy any wool, before he enters into bond to the king, with ſureties, that all the wool he ſhall buy, ſhall not be ſold by him to any perſon within 15 miles of the ſea, and if any wool be found carrying towards the ſea ſide, in the ſaid counties, unleſs it be firſt entred, and ſecurity given, it ſhall

be forfeited, and the offender ſhall alſo forfeit 3*s.* a pound. *id. ſ.* 4.—And no wool removed from the place where it was firſt lodged after ſhearing, within ten miles, ſhall be lodged, after the firſt removing, within 15 miles of the ſea in the ſaid counties; on pain of forfeiting all ſuch wool, if found; but if carried away, the owner ſhall forfeit 3*s.* a pound. *id. ſ.* 5.—And every perſon that ſhall lay any wool within 15 miles of the ſea, and not entered as aforeſaid, all ſuch wool ſhall be ſeized and forfeited; and every perſon claiming the ſame (upon ſuch ſeizure) ſhall give ſurety in the exchequer, if he ſhall be caſt upon trial, to pay treble coſts, over and above the ſaid penalties. *id. ſ.* 6.

Hundred to forfeit treble value.

And no wool, wool fells, mortlings, ſhortlings, woollen yarn, wool flocks, fuller's earth, or ſcouring clay, ſhall be loaden on any horſe or carriage, or carried by land, within 5 miles of the coaſt, but between ſun riſing and ſun ſetting; on pain of forfeiting the ſame, and the horſes and carriages. 7 & 8 *W. c.* 28. *ſ.* 8.

11. And the hundred next adjoining to the ſea coaſts, out of or through which the ſame is carried or exported, ſhall forfeit 20*l.* if the wool ſo carried out or exported ſhall be under the value of 10*l.* but if of greater value, then treble the value thereof, with treble coſts; to be ſued for within a year. 7 & 8 *W. c.* 28. *ſ.* 8, 12.

The execution to be againſt any two of the inhabitants; and the ſeſſions ſhall make an aſſeſſment to reimburſe them, as in caſes of robbery. *ſ.* 9.

And any perſon compounding with the hundred for leſs, ſhall be impriſoned five years, and another perſon may proſecute. *ſ.* 13.

And the owner of the wool, or of any other the commodities aforeſaid, and every perſon aiding in carrying or exporting any of them out of the kingdom, ſhall anſwer ſuch treble value to the ſaid inhabitants, as alſo treble coſts; to be recovered by them in the name of the clerk of the peace, in any court of record at *Weſtminſter*. *ſ.* 10.

Riotous exportation.

12. By the 19 *G.* 2. *c.* 34. which by the 4 *G.* 3. *c.* 12. hath continuance to *Sept.* 29. 1771, *&c.* If any perſons armed, to the number of three or more, ſhall be aſſembled to aſſiſt in the illegal exportation of wool, or in the carrying off wool in order to exportation, or in reſcuing the ſame after ſeizure, or in reſcuing an offender herein, or preventing his being apprehended, or ſhall be aiding in any the premiſſes; or if any perſon ſhall have his face diſguiſed when paſſing with ſuch wool, or ſhall forcibly hinder or aſſault any officer in ſeizing the ſame, or dangerouſly wound

any

any ſuch in attempting to go on board any veſſel, or ſhoot at or wound him when on board in execution of his office,— he ſhall be guilty of felony without benefit of clergy.

And if information, ſubſcribed, and on oath, be made hereof before a juſtice of the peace; he ſhall forthwith certify the ſame under hand and ſeal, and return the information to a ſecretary of ſtate, who ſhall lay the ſame before the king in council; and the king thereon may make order in two ſucceſſive gazettes for the offender to ſurrender in 40 days to ſome juſtice of the peace (who ſhall thereon commit him): The ſame order to be ſent to the ſheriff; who ſhall in 14 days after receipt, cauſe it to be proclaimed, between the hours of 10 and 12, on the market days, in two market towns, near to the place where the offence is committed, and a copy thereof to be affixed in ſome publick place in ſuch market towns. And if he ſhall not ſurrender, or eſcape after ſurrender, he ſhall likewiſe be guilty of felony without benefit of clergy.

But if he ſhall be taken before the time of ſurrender, he ſhall have a legal trial.

And if after the time of ſurrender, any perſon ſhall knowingly harbour him, he ſhall, on proſecution within a year, be guilty of felony, and be tranſported for ſeven years.

And if any officer in ſeizing the wool, or endeavouring to apprehend offenders, be beaten or killed, or the wool ſeized be reſcued, the hundred ſhall anſwer damages, as in caſes of robbery, not exceeding 40*l.* for any beating, nor 200*l.* for loſs of the wool; and ſhall pay 100*l.* to the executor or adminiſtrator of ſuch perſon killed: Provided that notice of the offence be given to, or left at the houſe of ſome conſtable near the place, as ſpeedily, as conveniently may be, deſcribing the offender. time, and place; and alſo in four days, to two inhabitants near; and in eight days, oath be made before a juſtice, whether he knows the offender, and if he does, entering into recognizance to proſecute; and in 20 day, like notice be given in the gazette; and 100*l.* bond, with two ſureties, be given before the ſheriff, to the high conſtable, to pay coſts, if caſt; and provided that an offender is not convicted in ſix months; and that the action be commenced within a year.

And if any perſon ſhall be maimed or grievouſly wounded in apprehending ſuch offender, he ſhall have moreover a further reward of 50*l.* to be paid by the commiſſioners of the cuſtoms or exciſe.

And the executors or adminiſtrators of ſuch perſon killed, ſhall have from them 100*l.* over and above what is paid by the hundred.

And if any perſon ſhall take an offender advertiſed, and not ſurrendered, and bring him before a juſtice of the king's bench, or juſtice of the peace for *London* or *Middleſex*, (to be by them committed to *Newgate*), he ſhall receive 500 *l.* reward, from the ſaid commiſſioners.

And an offender, not outlawed, aprehending an outlawed accomplice, ſhall have a pardon, and alſo the reward.

And an offender, not outlawed, convicting two accomplices not outlawed, ſhall have a pardon and 50 *l.* for each.

Exporting wool out of Ireland in particular.

13. By the 26 *G.* 2. *c.* 11. It ſhall be lawful for any perſon, to export from any port in *Ireland*, any wool, or woollen or bay yarn, wool fells, ſhortlings, mortlings, wool flocks, and worſted yarn, to any port in *Great Britain*.

But no perſon ſhall export, or load or ſhip, with intent to export, any wool, wool fells, ſhortlings, mortlings, or any woollen cloth, or manufacture, out of *Ireland*, except it be into *Great Britain*; on pain of forfeiting the ſame, and the ſhip, and alſo 500 *l.* and the maſter, mariners, and others aſſiſting, 40 *l.* 10 & 11 *W.* *c.* 10. *ſ.* 1, 2.

But the firſt three perſons, not being owners, or part owners, who have been aiding in exporting the ſame, that ſhall inform any juſtice of the peace, whereby the penalties may be recovered; ſhall be freed from all penalties for the ſame. 3 *G.* *c.* 21. *ſ.* 5.

And bond of double value of the goods ſhall be given to the officers of the cuſtoms, for every ſhip exporting the ſame, that they ſhall be landed in *Great Britain*. 10 & 11 *W.* *c.* 20. *ſ.* 5.

And no wool, or any of the ſaid goods, ſhall be brought into *Great Britain* or *Ireland*, but in ſhips of the built of *Great Britain* or *Ireland*; on pain of forfeiting the goods, or the value, together with the ſhip, and furniture. 12 *G.* 2. *c.* 21. *ſ.* 6.

And to prevent colluſive landing, none of the ſaid goods imported from *Ireland*, ſhall be landed but in preſence of the officers, and at the proper quays; on pain of forfeiting the ſame, or the value, and 3 *s.* for every pound, to be paid by the owner. *id.* *ſ.* 13.

And the commiſſioners of the cuſtoms in *Ireland*, ſhall every ſix months tranſmit to the commiſſioners of the cuſtoms in *England*, an account of wool exported, from whence, the quantity and weight, by whom, in what ſhip, where conſigned, names of the perſons in *England* ſigning cer-

certificates of landing the ſame, with the dates of ſuch certificates, and where landed, and the quantity and weight contained in the certificates: Which certificates ſhall not be obliterated or interlined, and ſhall be written on paper, and not parchment. 7 & 8 *W.* *c.* 28. *ſ.* 6, 7.

And a regiſter ſhall be kept at the cuſtom-houſe, *London*, of all the wool imported from *Ireland*, the weight, number, ſhip, maſter's name, owner's name, and to whom conſigned; for the uſe of the commiſſioners. 1 *W.* *c.* 32. *ſ.* 11.

Guard ſhips.

14. The commiſſioners of the admiralty ſhall appoint 2 fifth rate ſhips, 2 ſixth rates, and 8 armed ſloops, conſtantly to cruiſe on the coaſts, particularly between the north of *Ireland* and *Scotland*, with orders to ſeize all ſhips, exporting wool to foreign parts. And all wool, and veſſels ſo ſeized, ſhall be forfeited, and the wool lodged in the king's warehouſe till condemned; and then the ſame after 21 days (together with the veſſels ſo condemned) ſhall be ſold by inch of candle, notice being firſt given at the cuſtom-houſe of the port where lodged, and on the *Royal Exchange* at *London*; one fourth of the produce to the commander, one fourth to the officers, one fourth to the mariners, and one fourth to the king (charges of proſecution and condemnation being firſt paid out of the king's part.) And the commander neglecting his duty herein, ſhall forfeit his wages, and office, and be impriſoned ſix months. 10 & 11 *W.* *c.* 10. *ſ.* 16, 17, 18.

And they ſhall alſo appoint 3 ſixth rate ſhips, and 8 or more armed ſloops, to cruiſe on the *Britiſh* and *Iriſh* coaſts, with orders for ſeizing all ſhips wherein any woollen manufactures are exported from *Ireland*; which ſhips and goods ſhall be forfeited, one fourth to the commander, one fourth to the officers, one fourth to the mariners, and one fourth to the king, the charges being firſt paid out of the king's part. But if the ſeizure was at the information of any perſon, ſuch informer ſhall have a fifth part, and the reſidue be diſtributed as above. 5 *G.* 2. *c.* 21. *ſ.* 1, 2, 3.

Exporting wool or woollen manufactures from America.

15. No wool or woollen manufactures, ſhall be exported from any of the *American* colonies, on the like pain as from *Ireland*. 10 & 11 *W.* *c.* 10. *ſ.* 19.

Inſuring wool to be landed in foreign parts.

16. Perſons inſuring wool, and other the ſaid goods, to be landed in foreign parts, and alſo perſons agreeing to pay the money for ſuch inſuring, ſhall forfeit 500*l.* to him who ſhall ſue in any court of record, in the name of an officer of the cuſtoms, exciſe, or ſalt, or of the attorney general. 12 *G.* 2. *c.* 21. *ſ.* 29, 30, 32.

And

And the inſurer informing ſhall be diſcharged of his own penalty; and ſhall have the forfeiture of the other party; and ſhall alſo keep the inſurance money paid to him: And the inſured informing ſhall receive back his inſurance money if paid; and if not paid, ſhall be indemnified from paying it; and ſhall be diſcharged of his own penalty; and ſhall have the forfeiture of the other party. *id. ſ.* 31.

And all inſurances of wool, and woollen goods, and other the goods before mentioned, ſhall be void. *id. ſ.* 33.

IV. Concerning cards for the manufacturing of wool.

No foreign wool cards, or card wyre, ſhall be imported, or uſed; nor ſhall any wyre be taken out of old cards, and put into new leather and boards, nor any cards made thereof be put to ſale; on pain of forfeiting the ſame, or the value thereof, if the ſame be not ſeized, half to the king, and half to him that ſhall ſeize or ſue for the ſame in any court of record at *Weſtminſter*, or within the county, city or town corporate, where the offence ſhall be committed. 13 & 14 *C.* 2. *c.* 19.

V. Concerning the deceitful working of woollen cloth.

1. No perſon ſhall put any hair, flocks, thrums, or yarn of lamb's wool, or other deceivable thing in any woollen cloth, on pain of forfeiting the ſame; and the perſon procuring ſuch deceitful thing for that purpoſe, ſhall likewiſe forfeit the ſame: half to the finder, and half to the poor. 43 *El. c.* 10. *ſ.* 2, 12.

2. But in the caſe of *broad* cloth, by the 21 *J. c.* 18. the aboveſaid penalty is mitigated; which enacteth, that no perſon ſhall put any flocks, noiles, thrums, hair, or other deceivable thing, in any broad cloth; on pain of 5 *l.* (and no greater penalty) to the poor. *ſ.* 3.

And for the better diſcovery thereof, two juſtices, on information of any one of his knowledge or ſuſpicion of ſuch offence, may grant their warrant to call before them any perſon that ſhall in their diſcretions be thought fit to diſcover any ſuch offence, and examine them on oath; and if it be found, by two witneſſes, or confeſſion, they ſhall certify the ſame under their hands and ſeals to the churchwardens and overſeers; who ſhall, upon ſuch certificate, and by warrant of ſuch juſtices, levy the penalty by diſtreſs: in

in default of diſtreſs, to be committed to gaol till paid. *ſ.* 4, 5.

And the ſearchers ſhall ſet upon the ſame the word [*faulty*] and no perſon ſhall ſearch the ſame again, on pain of 5 *l.* to the party grieved; who ſhall ſue for the ſame by bill, plaint, or information, at the ſeſſions. 21 *J.* *c.* 18. *ſ.* 7.

3. No clothier ſhall uſe, or cauſe to be uſed, any ends of yarn, wefts, or other refuſe of cloths, druggets, or other woollen goods, or goods mixed with wool (flocks and pinions only excepted,) by working the ſame up again into any ſort of goods; on pain of 5 *l.* on conviction before two juſtices on information on oath, in three months after the offence; to be levied by diſtreſs; half to the informer, and half to the poor: for want of diſtreſs, to be committed to gaol not exceeding three months, or until ſatisfaction be made. But perſons aggrieved may appeal to the next ſeſſions, giving ſix days notice in writing; who may order coſts and damages, and levy the ſame by diſtreſs, by their order or warrant; for want of diſtreſs, may commit the party to gaol, or to the houſe of correction not exceeding three kalendar months; or until ſatisfaction ſhall be made. And no certiorari ſhall lie on this act. 13 *G.* *c.* 23. *ſ.* 3, 4, 6.

And if any perſon ſhall be found collecting, buying, or carrying, in any bag or other convenience, any ſuch ends of yarn, wefts, thrums, ſhort yarn, or other refuſe of cloth, drugget, or other woollen goods, or goods mixed with wool (flocks and pinions only excepted); the conſtable may, by warrant of one juſtice, ſearch ſuch perſon, bag or convenience, and if any the ſame be found, he ſhall carry the offender before a juſtice of the peace, and on conviction before him, by confeſſion, or oath of one witneſs, he ſhall be deemed an incorrigible rogue, and liable to be puniſhed as ſuch. 13 *G.* *c.* 23. *ſ.* 8. 17 *G.* 2. *c.* 5. *ſ.* 4.

VI. Concerning the fulling of cloth.

Every fuller, in his craft and occupation of fulling, rowing, or tayſelling of cloth, ſhall uſe tayſels, and no cards, deceitfully impairing the ſaid cloth, on pain to yield to the party grieved his double damage: And every juſtice of the peace, mayor, maſter, warden, bailiff, portreve, conſtable of hundred, and ſtewart of leet in their reſpective liberties, may hear and determine the ſame, and commit the offender to the next gaol till payment. And alſo any perſon not grieved may make information to any ſuch juſtice, mayor,

maſter,

maſter, warden, bailiff, portreve, or ſteward; in which caſe the offender ſhall forfeit to the king, or to ſuch perſon as ſhall be intitled to fines or amercements within their juriſdiction, 3*s.* 4*d.* and they may make proceſs againſt the party in like manner as juſtices of the peace may do for ſureties of the peace, without any fee to be taken for the execution of their offices in this behalf. 4 *Ed.* 4. *c.* 1. *ſ.* 6.

And no cloth, not fulled, ſhall be exported; on pain of forfeiting the ſame, half to the king, and half to him that will ſue. 7 *Ed.* 4. *c.* 3.

The laws for preventing the exportation of fuller's earth, have been treated of under the article concerning the exportation of wool.

VII. Concerning the ſearching of cloth, and therein of the length, breadth, and weight thereof.

Yard and inch.

1. For the meaſuring of cloth, the ſtatutes do generally provide that the yard ſhall conſiſt of a ſtandard yard, and the breadth of a man's thumb beſides; or 37 inches in the whole.

Overſeers of cloth.

2. In every pariſh and hamlet where cloths are made, two juſtices (and in corporations, the mayor, together with one juſtice of the ſhire next adjoining) ſhall once a year, or oftner, call before them, by precept or otherwiſe, 2, 4, 6, 8, or more, of the moſt honeſt, diſcreet, and able men of ſuch place, and appoint them overſeers for a year, or ſix months, or ſhorter time; and ſhall take them ſworn, and bound in recognizance of 40 *l.* each, to do their beſt endeavour by all lawful ways and means to ſee the ſtatutes obſerved relating to the regulation of cloth. 3 & 4 *Ed.* 6. *c.* 2. *ſ.* 9. 39 *El.* *c.* 20. *ſ.* 4. 43 *El.* *c.* 10. *ſ.* 7.

And any perſon, without reaſonable excuſe, refuſing to be overſeer, ſhall forfeit 5 *l.* half to the king, and half to ſuch juſtices; and to remain in ward of the ſheriff, till paid or ſecured. 39 *El.* *c.* 20. *ſ.* 5.

Overſeers to ſearch.

3. And the ſaid overſeers, or two of them, ſhall once a month at leaſt, or ſo often as need ſhall require, go into the houſes and rooms where the cloth ſhall be, and ſearch, and try the ſame, by water, weight, or any other way. 39 *El.* *c.* 20. *ſ.* 4.

And if any ſhall withhold cloth, or deny ſearch; he ſhall, on conviction thereof at the ſeſſions, forfeit for the firſt offence, 10 *l.* for the ſecond 20 *l.* for the third, being convicted by verdict and two witneſſes, he ſhall ſtand upon the pillory in the next market town. 39 *El.* *c.* 20. *ſ.* 5.

Which

Which ſaid forfeitures ſhall be, one third to the overſeers, one third to the king, and one third to the poor, as the ſeſſions ſhall appoint. *id. ſ.* 9.

4. And by the 4 *J. c.* 2. (which is a judicious act, as are many in that king's reign) the ſeveral ſorts of cloth ſhall be in length and breadth at the water, when thoroughly wet, and in weight when ſcoured, thicked, miled, and fully dried, as followeth : Length, breadth and weight of cloth.

	Yards long	Quarters broad	Pounds weight
Long coloured broad cloth —	30 to 34	— 6½	— 86
Long *Worceſter* ——— ——	30 to 33	— 7	— 78
Long plunkets, azures, blues, and long whites ———	29 to 32	— 6½	— 80
Sorting cloths with a blue ſelvedge —— ———	23 to 26	— 6	— 64
Fine ſhort *Suffolks* ———	23 to 26	— 6½	— 64
Handiwarps —— —	29 to 32	— 7	— 76
Broad plunkets, azures, blues, and other broad coloured	26 to 28	— 6½	— 68
Coloured ſhort ———	23 to 25	— 6½	— 66
Half pieces of the ſame, called dozens, in proportion.			
Broad liſted whites and reds	26 to 28	— 6½	— 64
Narrow liſted whites ——	26 to 28	— 6½	— 61
Narrow liſted reds ——	26 to 28	— 6½	— 60
Fine cloth with plain liſts	29 to 32	— 6½	— 72
Cloths having ſtopt liſts —	30 to 33	— 7	— 78
Broads, called *Tauntons*, *Bridgewaters*, and *Dunſters* —	12 to 13	— 7	— 30
Narrow ditto —— ——	24 to 25	— 4	— 30
Half cloth in proportion.			
Devonſhire kerſeys, called dozens	12 to 13 —		— 13
Check kerſeys, ſtraits and plain greys ——— ——	17 to 18	— 4	— 24
Ordinary peniſtones, or foreſt whites —— ——	12 to 13	— 5½	— 28
Sorting peniſtones ———	13 to 14	— 6½	— 35
Kerſeys, called waſhers, or waſh whites, half thicked ——	17 to 18 —		— 17
The ſame quarter thicked —	18 to 19 —		— 17

Allowance in weight, for dying, dreſſing, rowing, and ſhearing, ſhall be made, in broad cloth four pounds, long cloth five pounds, and ſo in proportion. 4 *J. c.* 2. *ſ.* 13.

And no liquid ſhall be uſed for increaſe of weight, on pain of 40 *s.* half to the king, and half to the buyer that ſhall ſue. *id. ſ.* 12.

5. And

Maker's ſeal. 5. And the maker, before ſale, ſhall ſet his ſeal of lead to the ſame, containing the length, and weight, to be tried by the water. 39 *El. c.* 20. *ſ.* 3.

Overſeer's ſeal. 6. And the overſeer ſhall fix a ſeal of lead to the cloth, containing the length and weight, with this word [ſearched], 39 *El. c.* 20. *ſ.* 6.

And he ſhall, on the penalty of his recognizance, ſet his chriſtian and ſurname upon the ſeal; and no ſeal otherwiſe ſhall be good. 21 *J. c.* 18. *ſ.* 11.

And, cloth, ſealed by the overſeers, ſhall not be again tried but by the buyer. 4 *J. c.* 2. *ſ.* 22.

And if they ſhall find any *falſe* ſeal or mark, or the cloths to be ſtretched, they ſhall preſent the defaults at the next ſeſſions. 39 *El. c.* 20. *ſ.* 5.

And if any perſon ſhall ſet any ſeal to cloth, or take any ſeal away without warrant; he ſhall, on conviction thereof at ſuch ſeſſions, for the firſt offence forfeit 10 *l.* for the ſecond 20 *l.* and the pillory: The ſaid forfeitures to be one third to the overſeers, one third to the king, and one third to the poor, as the ſeſſions ſhall appoint. 39 *El. c.* 20. *c.* 9.

Cloth ſold unſealed. 7. And if any cloth be offered to be ſold unſealed, the overſeers ſhall ſeize it, and preſent the ſame to the juſtices at the next ſeſſions. 39 *El. c.* 20. *ſ.* 4.

Cloths deficient in length, breadth, or weight. 8. And for every of the ſaid cloths abovenamed, which ſhall be of leſs length than the ſeal doth import, ſhall be forfeited 6 *s.* 8 *d.* a yard, beſides abatement of the price for what is wanting. 4 *J. c.* 2. *ſ.* 20.

For every yard of the ſaid cloths ſold, above the lengths, ſhall be forfeited 10 *s.* *id. ſ.* 17.

For the ſame wanting breadth throughout, ſhall be forfeited 20 *s.* wanting for half the length 10 *s.* under half 5 *s.* *id. ſ.* 19.

And for every pound wanting above two pounds in weight ſhall be forfeited 10 *s.* *id. ſ.* 18.

Diſtribution of forfeitures. 9. And by the 21 *J. c.* 18. *ſ.* 12. All penalties and forfeitures whatſoever, for want of length, breadth, and weight, by this or any former act, ſhall be diſtributed into three equal parts; one third to the overſeers and ſearchers finding and certifying the default, to be recovered by them in ſeſſions, by action of debt, bill, plaint, or information, and two thirds to the poor, by diſtreſs.

Meaſure and weight of other cloths. 10. Meaſure and weight of cloths by former acts, not altered by the 4 *J. c.* 2. ſeem to he as follows:

By the 3 *J. c.* 16. Ordinary kerſey ſhall not exceed 24 yards in length, and ſhall weigh one pound and three ounces a yard: Sorting kerſeys ſhall not exceed 24 yards in length,

length, and ſhall weigh one pound three ounces and half a yard: On pain of 5 s. for every yard above, and 2 s. for every pound wanting (to be levied and diſtributed in like manner.)

By the 3 *J.* *c.* 17. No penalty ſhall be, for want of a ſeal on *Welch* cottons; and they ſhall not be ſearched or tried but by the buyer.

By the 8 *El.* *c.* 12. Frizes and rugs ſhall be from 35 to 37 yards long, three quarters of a yard within a nail broad, and 44 pounds weight; (On pain of 20 *s.* for offending in length or breadth, by 5 & 6 *Ed.* 6. *c.* 6. *ſ.* 25. And for every pound wanting above four pounds, 5 s. by 4 & 5 P. & *M.* *c.* 5. *ſ.* 15.)

Moreover, by the 7 *J.* *c.* 16. Cogware, Kendals, coarſe Cottons, and Carptmeals, made in *Cumberland*, *Weſtmorland*, or in *Carptmeale*, *Hawkeſhed*, and *Broughton* in *Lancaſhire*, whereof the dozen ſhall not exceed the price of 13 *s.* 4 *d.* ſhall not be ſearched nor ſealed, but may be made in ſuch ſort as may beſt pleaſe the buyer.

VIII. Concerning the dying of cloth.

1. For the encouragement of dreſſing and dying of cloth, no perſon ſhall export any white woollen broad cloath, until he have paid duty of 5 *s.* for every ſuch cloth; on pain of forfeiting the ſame, or the value thereof, half to the king, and half to him that ſhall ſeize, inform or ſue, 6 *An.* *c.* 8.

2. No wool ſhall be boiled with galls, bark of trees, or pain of forfeiting the ſame, or the value thereof, half to the king, and half to him that ſhall ſue. 5 & 6 *Ed.* 6. *c.* 6. *ſ.* 52.

3. No perſon ſhall dye any wool to be converted into cloth, called ruſſets, muſters, marbles, greys, roys, and ſuch like colours, or into hats or caps; unleſs it be perfectly woaded, boiled, and maddered: on pain of 40 *s.* for ſo much thereof as will ſerve for the making of every ſuch cloth; half to the king, and half to the overſeer who ſhall diſcover and ſue in any court of record, or before the juſtices of peace. And if the overſeer will not ſue in half a year, then the ſaid moiety to any other perſon who will ſue in another half year. 3 & 4 *Ed.* 6. *c.* 2. *ſ.* 5, 10, 11.

4. No perſon ſhall dye with braſel, to make a falſe colour in cloth or wool, hats, or caps; on pain of 20 *s.* in like manner. 3 & 4 *Ed.* 6. *c.* 2. *ſ.* 5.

5. No

5. No perſon ſhall dye any woollen cloths, as browns, blues, pewks, tawnies, or violets; except the ſame be perfectly boiled, greined, or maddered upon the woad, and ſhot with good cork or orchal; on pain of 20 *s.* in like manner. 3 & 4 *Ed.* 6. *c.* 2. *ſ.* 4.

6. By the 13 *G. c.* 24. If any perſon ſhall dye any bays, or other woollen goods, for mather blacks, and not being dyed throughout with woad, indico, and mather only; he ſhall (being convicted thereof in 40 days) forfeit for every long *Bocking* bays containing 70 yards 44 *s.* *Colcheſter* or ſhort bays of 35 yards 22 *s.* and ſo in proportion. If the penalty is above 5 *l.* it ſhall be recovered in the courts at *Weſtminſter*; if under 5 *l.* before two juſtices (not intereſted) by oath of one witneſs, half to the informer, and half to the company of dyers, if in *London*; if out of *London*, the whole to the informer and proſecutor. And if the penalties under 5 *l.* are not paid in 20 days after conviction, then to be levied by the conſtable by warrant of ſuch juſtices by diſtreſs; for want of diſtreſs, to be committed to the houſe of correction, to be kept to hard labour not exceeding three months. But perſons aggrieved by the juſtices may appeal to the next ſeſſions, who may allow coſts. And the ſaid mathered blacks ſhall be marked with a red roſe and a blue roſe; and if any perſon counterfeit the ſame, he ſhall forfeit 4 *l.* in like manner.

And if any perſon ſhall dye for *woaded* black any woollen goods, the ſame not being woaded, he ſhall forfeit in like manner for every cloth of 44 yards 40 *s.* bays of 70 yards 30 *s.* *Colcheſter* or ſhort bays of 35 yards 12 *s.* perpetuana or ſtuffs 4 *s.* and ſo in proportion. And the ſaid woaded blacks ſhall be marked with a blue roſe only: And if any perſon ſhall counterfeit the ſame, he ſhall forfeit 4 *l.* in like manner.

And if any perſon ſhall uſe logwood in dying blue, he ſhall forfeit in like manner for cloth of 44 yards 40 *s.* *Bocking* bays of 70 yards 22 *s.* *Colcheſter* or ſhort bays of 35 yards 12 *s.* perpetuana or ſtuff of 24 yards 4 *s.* and for other woollen goods in proportion.

And the dyers within *London* ſhall be ſubject to the inſpection of the company; — out of the limits thereof, the quarter ſeſſions may appoint ſearchers; who may (with the conſtable's aſſiſtance) ſearch in the day time; and perſons refuſing ſuch ſearch ſhall forfeit 10 *l.* in like manner.

IX. Con-

IX. Concerning tenters, and the ſtretching of cloth.

1. No perſon ſhall have or uſe any tenter, with a lower bar, pin, ring, or other engine or device; any wrinch, ring head, growm, rope, or other engine, to ſtretch any rough and unwrought woollen cloth: on pain of 20 *l.* half to the king, and half to him that ſhall ſue. 43 *El. c.* 10. *ſ.* 2. Tenter.

2. No perſon ſhall ſtretch (or ſell the ſame ſtretched) any wrought woollen broad cloth above one yard in length, and half a quarter in breadth; or half cloth above half a yard in length, and half a quarter in breadth; or kerſey, cotton, dozen, peniſtone, frize, rugg, above half a yard in length, and one nail in breadth; on pain of forfeiting the ſame, half to the overſeer, or informer, and half to the poor. 43 *El. c.* 10. *ſ.* 3, 12. Stretching.

3. If any perſon ſhall felonioufly cut and take, ſteal, or carry away, any cloth or other woollen manufacture from the rack or tenter in the night time, he ſhall be guilty of felony without benefit of clergy. 22 *C.* 2. *c.* 5. *ſ.* 3. Stealing off tenters.

But becauſe it is often difficult to prove the owner's property in the cloth, therefore by the 15 *G.* 2. *c.* 27. it is enacted, that if any cloth or woollen goods on the tenters, or woollen yarn or wool left out to dry, ſhall be ſtolen in the night, any juſtice on complaint made in ten days by the owner, may iſſue his warrant to any peace officer, in the day time to enter into, and ſearch the houſes, out houſes, yards, gardens, or other places belonging to the houſes of every perſon whom ſuch owner ſhall upon his oath declare to ſuch juſtice he ſuſpects to have ſtolen, taken away, or received the ſame; and if the officer ſhall find any ſuch goods which from the oath of ſuch perſon he ſhall have reaſon to ſuſpect to have been ſtolen, he ſhall apprehend the perſon in whoſe cuſtody or poſſeſſion the ſame ſhall be found, and carry him before a juſtice; and if he ſhall not give a ſatisfactory account how he came by the ſame, or in a convenient time to be ſet by the juſtice produce the party of whom he had the ſame, or a credible witneſs to depoſe on oath his property therein, he ſhall be convicted of ſtealing ſuch goods; and ſhall for the firſt offence forfeit to the owner treble value, and in default of payment thereof in the time appointed by ſuch juſtice, he ſhall iſſue his warrant to levey the ſame by diſtreſs and ſale; and in default of diſtreſs, ſhall commit him to the common gaol where he ſhall be apprehended, for three months, or till paid; for the

ſecond offence treble value, and ſix months impriſonment; for the third offence, ſuch juſtice ſhall commit him till the aſſizes, and if he ſhall be there convicted in like manner, he ſhall be guilty of felony, and tranſported for ſeven years. But perſons aggrieved (except on the third conviction) may appeal to the next general quarter ſeſſions, whoſe order therein ſhall be final. But nevertheleſs, this ſhall not alter any former law in force, for ſtealing or receiving ſuch cloth, or goods, except where the proof is laid on the offender.

X. Concerning the dreſſing of cloth.

1. No woollen cloth ſhall be exported, till it be barbed, rowed, and ſhorn; on pain of forfeiting the ſame, half to the king, and half to him that will ſue. 3 *H.* 7. *c.* 11.

2. No perſon ſhall uſe iron cards, or pickards, in rowing of cloth; on pain of forfeiting the cards, and 20 *s.* half to the king, and half to the overſeer who ſhall diſcover and ſue in any court of record, or before the juſtices of the peace. And if the overſeer will not ſue in half a year, then the ſaid moiety to any other perſon who will ſue in another half year. 3 & 4 *Ed.* 6. *c.* 2. *ſ.* 7, 10, 11.

3. No perſon ſhall put any flocks, chalk, flour, or ſtarch, or other deceivable thing on cloth; on pain of 40 *s.* in like manner. 3 & 4 *Ed.* 6. *c.* 2. *ſ.* 6.

4. There ſhall be no rowing, or raiſing of cloth, with oil, greaſe, or any liquid, but only on the edge of the ſhears with ſemet or oils; on pain of 13 *s.* 4 *d.* half to the king, and half to the buyer that ſhall ſue. 4 *J.* *c.* 2. *ſ.* 10.

5. There ſhall be no cutting of wool from the backſides of cloth, but with ſhears only; on the like pain of 13 *s.* 4 *d.* 4 *J.* *c.* 2. *ſ.* 11.

6. No liquid ſhall be uſed on the ſide of the cloth, to make it look better than the midſt; on like pain of 13 *s.* 4 *d.* 4 *J.* *c.* 2. *ſ.* 12.

7. The ſides ſhall not be raiſed, fulled, rowed, or ſhorn, better than the middle; on like pain of 13 *s.* 4 *d.* 4 *J.* *c.* 2. *ſ.* 10.

8. No perſon ſhall preſs cloth with a hot preſs; on pain of forfeiting the ſame, or the value, half to the king, and half to him that ſhall ſue. 5 & 6 *Ed.* 6. *c.* 6. *ſ.* 47.

9. And preſſing of cloth with hot boards ſhall be puniſhed with like forfeiture, as preſſing it with a hot preſs. 21 *J.* *c.* 18. *ſ.* 11.

XI. Con-

XI. Concerning mixed or medley broad cloth in particular.

Mixed or medley broad cloth.

It is provided by the 10 *An. c.* 16. and 1 *G. ſt.* 2. *c.* 15. that nothing therein ſhall extend to any cloth made in *Yorkſhire*; By which acts it is alſo further provided as follows:

Fulling miller to meaſure.

The fulling miller ſhall take an oath before a juſtice dwelling near ſuch mill, that he will well and truly perform the meaſuring all mixed or medley broad cloth fulled at his mill.

And ſeal.

In order to which, he ſhall have a table 12 foot long, and three foot broad, whereon the cloth ſhall be doubled and laid plain, with the length of a yard marked thereon: on which he ſhall meaſure the ſame, when fulled and wet; and ſhall fix and rivet at the head end thereof a ſeal of lead (to be furniſhed by the clothier), which ſhall be marked with a crown on the rivet: on which ſeal he ſhall ſtamp his name, and the length and breadth of the cloth; for which he ſhall have one penny.

And enter the ſame.

He ſhall alſo enter in a book, the marks, ſort, number, length and breadth thereof.

And if he ſhall refuſe to take ſuch oath, or to fix ſuch ſeal, or to make ſuch entry; he ſhall, on conviction in 40 days, before one juſtice not intereſted, on oath of one witneſs, forfeit 20 *l.* to the poor of the pariſh or place, charges of conviction firſt deducted. If not paid in 30 days after conviction, to be levied by diſtreſs. For want of diſtreſs, to be committed to the gaol or houſe of correction, to be kept to hard labour for three kalendar months. Perſons aggrieved may appeal to the next ſeſſions, who may allow coſts.

Counterfeiting the ſeal.

And if any perſon ſhall take off, deface, counterfeit, or alter, ſuch ſeal, or add any other; he ſhall in like manner forfeit 20 *l.*

Selling before ſealed.

And no perſon ſhall expoſe to ſale any mixed or medley broad cloth, before it be ſo ſealed; on pain of forfeiting one ſixth part of the cloth, to the poor in like manner: or, if it is in *London*, to the benefit of *Chriſt*'s hoſpital.

Buyer may meaſure again.

If the buyer is not ſatisfied with the meaſure, he may have it meaſured again in the water, in eight days after delivery, giving two days notice to the ſeller or his factor: In which caſe, each party ſhall chuſe a meaſurer; and if thoſe two diſagree, they may chuſe a third: and if he ſhall refuſe, it ſhall be meaſured, if in *London* by the keeper of

Blackwell-hall, who ſhall be ſworn before a juſtice to meaſure it truly: if not in *London*, then if the two meaſuress diſagree, or appoint not a third perſon, the chief magiſtrate ſhall appoint and ſwear one.

But if the ſeller doth not then appear, or doth not then appoint a meaſurer, the keeper of *Blackwall-hall* ſhall proceed to meaſure it.

And the meaſurer ſhall be paid by the buyer 6*d.* for each piece.

And he ſhall make a certificate of the true meaſure thereof.

And if on ſuch his meaſuring there appear a leſs quantity in length, or in the greateſt part of the breadth, than is mentioned in the ſeal, the owner or ſeller ſhall forfeit the ſixth part of the value of ſuch cloth, to be paid by the buyer and deducted out of the price, on the meaſurer's making ſuch certificate, and making ſuch oath thereof before a juſtice, of which the juſtice ſhall give him a certificate. The ſame to be repaid by the fulling miller.

And the ſaid certificate ſhall in ten days be filed with the clerk of the peace, for which he ſhall have 1*s.* which certificate ſo filed, ſhall be a ſufficient conviction. And an atteſted copy of ſuch certificate (for which the clerk of the peace ſhall likewiſe have 1*s.*) ſhall be a ſufficient authority to the owner or ſeller, to demand of the milman the forfeitures deducted out of the price. Which if he ſhall refuſe to pay, it ſhall be levied by diſtreſs, by warrant of one juſtice; and for want of diſtreſs, to be committed to gaol or houſe of correction for three months.

Tenters. And by the 13 *G. c.* 23. Every owner of tenters for mixed or medley broad cloth, in the counties of *Glouceſter*, *Wilts*, and *Somerſet*, ſhall meaſure the tenter, and mark in figures the length of yards, beginning at number I, and ſo continuing to the end, upon the top bar, and on the foreſide thereof; on pain of 5*l.* on conviction before two juſtices, on information on oath, in three months after the offence; to be levied by diſtreſs, half to the informer, and half to the poor: for want of diſtreſs, to be committed to gaol not exceeding three months, or until ſatisfaction be made.

Inſpectors. And the juſtices of the ſaid counties, at *Eaſter* ſeſſions yearly, ſhall chuſe inſpectors; who, before they enter upon their office, ſhall take this oath; *I* A. B. *do ſwear, that I will well and truly execute the office of an inſpector of mixed or medley woollen broad cloth within this county, according to the laws*

laws and ſtatutes of this realm, and according to the beſt of my ſkill and knowledge: So help me God.

And they ſhall inſpect the mills, ſhops, houſes, and tenter grounds of perſons concerned in milling and manufacturing mixed or medley woollen broad cloath; and ſhall meaſure the cloth on the tenter; and ſuch inſpector ſhall ſtamp his name on a lead ſeal, to be furniſhed by the maker of the cloth, and affix the ſame on the head end of ſuch cloth, and ſhall regiſter in a book the clothier's, milman's or other perſon's name, and the number, length, and breadth, of every ſuch cloth; and ſhall at every quarter ſeſſions give in a copy of ſuch regiſter, with an account of forfeitures levied.

The milman ſending home ſuch cloth before inſpected, ſhall forfeit 40*s.* in like manner.

Perſons refuſing entrance to the inſpector, ſhall forfeit 10*l.* in like manner.

And the inſpector acting againſt his oath, ſhall forfeit 20*l.* in like manner.

And the ſaid juſtices ſhall allow a ſallary to each inſpector, not exceeding 30*l.* a year; for the raiſing of which, every maker ſhall pay to the inſpector 2*d.* for every ſuch cloth, before they are ſent from the mill; who ſhall pay the ſame every three months or oftner, to the county treaſurer, to be applied by the ſeſſions towards ſuch ſalaries.

XII. Concerning the Yorkſhire *manufacture in particular.*

Narrow woollen cloth.

1. By the 11 *G.* 2. *c.* 28. The juſtices at the *Eaſter* ſeſſions yearly for the *Weſt Riding* of the county of *York*, ſhall apoint ſearchers, ſuch as have ſerved apprenticeſhips to the trade of making narrow cloth, or have exerciſed ſuch trade three years; and appoint them ſalaries: Who ſhall be ſworn before a juſtice, well and truly to execute the office of ſearching ſuch narrow woollen cloth. And in caſe of the death or ſickneſs or other diſability of a ſearcher; one juſtice, living near, may appoint another till the next ſeſſions, to be there confirmed, or another appointed. 11 *G.* 2. *c.* 28. *ſ.* 3, 4.

Which ſaid cloth may be made of what length and breadth the maker ſhall think fit. *ſ.* 13.

And he ſhall weave or ſet in the head of every piece, the firſt letters of his name; on pain, on conviction in one month, of forfeiting 20*s.* *ſ.* 1.

And the ſame ſhall be meaſured when wet at the mill, both by the milman and the ſearcher, who ſhall meaſure it down the middle for the length, and within the liſts for the breadth. *ſ.* 1.

And the milman ſhall rivet at one end a ſeal of lead, to be furniſhed by the clothier, and ſhall ſtamp his name thereon at length, and the length and breadth in figures: And the ſearcher ſhall alſo affix a ſeal of lead at the other end, with his name, with the length and breadth in like manner. *ſ.* 1.

And they both ſhall keep books, wherein they ſhall enter the day and year when milled, the name and place of abode of the owner, and the length and breadth; and ſhall ſuffer the buyer to inſpect the ſame. *ſ.* 1.

The miller, or ſearcher offending herein, ſhall, on conviction in eight days after the cloth is removed from the mill, forfeit 5 *l.* *ſ.* 1, 2.

And if any perſon ſhall counterfeit the ſeal or mark, he ſhall (on conviction in one month) forfeit 40 *s.* *ſ.* 7.

And a ſum not exceeding 3 *d.* for each cloth, ſhall be paid by the owner before it is carried from the mill, to ſuch perſon as the juſtices at *Eaſter* ſeſſions ſhall appoint, to pay the ſearchers ſalaries, and other expences of the act: And the perſon ſo appointed may detain the cloth at the mill till paid; and if not paid in eight days after demand, ſuch perſon may ſell the ſame, and detain the money, rendering the overplus on demand. *ſ.* 8, 9.

And the owner ſhall meaſure the cloth when brought from the mill, before it is ſet on the tenter; and if it is leſs than the ſtamp, or by lying wet is become leſs, he ſhall carry it to the milman and ſearcher to be reſtamped, on pain of 5 *s.* on conviction in one month after the offence. *ſ.* 5.

The owner may ſtretch the ſame one inch in a yard in length, and two inches in every three quarters in breadth, and ſo in proportion: but if any perſon ſtretch it further, he ſhall forfeit for the firſt half yard in length, or firſt inch in breadth overſtretched 10 *s.* and for every other half yard in length, or half inch in breadth 20 *s.* *ſ.* 6.

The conviction to be before one juſtice, not being a dealer in cloth, on oath of one witneſs, reaſonable notice being firſt given to the perſon accuſed. *ſ.* 10.

The forfeitures (if not paid in ten days after notice of the conviction given at the offender's laſt place of abode, and if he ſhall not appeal) to be levied by the conſtable by warrant of a juſtice by diſtreſs, rendering the overplus on demand, charges of diſtreſs and ſale being firſt deducted: To

be

be diſtributed (after deducting the charges of conviction) half to the informer, and half to the treaſurer for the expences of carrying the act into execution: For want of diſtreſs, to be committed to the houſe of correction to hard labour for one month. *ſ.* 10.

Perſons aggrieved may appeal to the next quarter ſeſſions to be held after 14 days from the conviction, given ten days notice to the informer. And the juſtices there, may award coſts. *ſ.* 12.

2. By the 5 *G.* 3. *c.* 51. (which extends to all woollen cloth made in the ſaid *Weſt Riding*, except ſuch narrows as are provided for by the aforeſaid act of the 11 *G.* 2. *c.* 28.) And by the 6 *G.* 3. *c.* 23. (which extends to all ſuch woollen cloths, except as before excepted, and except ſuch woollen goods as are made for blanketing, and ſtriped duffeled blankets;) it is enacted as follows:

The juſtices for the ſaid *Weſt Riding* (not being dealers in woollen cloth, nor occupiers of any fulling mill) ſhall, at the *Bradford* Midſummer ſeſſions yearly, appoint ſo many men as they ſhall think proper (having been brought up in the manufacture of woollen cloth in the ſaid riding, and under 60 years of age) to be *ſearchers* or meaſurers of cloth at the fulling mills, and allow them ſalaries. 5 *G.* 3. *c.* 51. *ſ.* 2. 6 *G.* 3. *c.* 23 *ſ.* 1, 18.

And ſhall alſo appoint *inſpectors* (not exceeding 12 in number) of broad woollen cloths, and of the work ſhops, tenter grounds, and warehouſes; with ſalaries, not leſs than 20*l.* a year, 5 *G.* 3. *c.* 51. *ſ.* 7.

And alſo *ſupervifors* (not exceeding 4 in number) of the conduct and behaviour both of the ſearchers and inſpectors; with ſalaries, not leſs than 40*l.* a year, and 10*l* more, if their duty require them to keep a horſe. *id.*

All of them before they enter upon their office, to be ſworn before a juſtice, that they will well and truly, to the beſt of their ſkill and power, execute ſuch office. *id.*

And ſhall alſo give bond to the treaſurer, with a ſurety, in the penalty of 50*l* duly to account for and pay the money by them reſpectively to be received in the execution of their office. 6 *G.* 3. *c.* 23. *ſ.* 9.

And provided always, that if any of the ſaid officers ſo appointed ſhall keep a publick houſe for ſelling ale, beer, or other liquors; or be concerned in the making, buying, or ſelling, any wool, woollen manufactures, or goods commonly made uſe of in dying; or be guilty of any miſbehaviour or neglect of duty; and ſhall be convicted thereof by the oath of one witneſs before two juſtices: it

ſhall be lawful for the juſtices at the next ſeſſions after ſuch conviction, on producing the ſame, or due proof thereof, to diſcharge ſuch officer, and appoint another in his room. 6 *G.* 3. *c.* 23. *ſ.* 17.

And if any of the ſaid officers ſhall die, or become incapable by ſickneſs or other accident within the year; one juſtice near the place may appoint another till the end of the year, or during ſuch ſickneſs or incapacity. *ſ.* 10.

The maker of cloth, ſhall weave or ſow into the head of every piece by him made, his name and place of abode, either in diſtinct letters or words, or in ſome common or known abbreviations. 5 *G.* 3. *c.* 51. *ſ.* 18. 6 *G.* 3. *c.* 23. *ſ.* 13.

And at the fulling mill, for every yard of cloth exceeding 58 yards, whether in one cloth, or two ſhort cloths or ends, which ſhall be milled in one ſtock at one time, the owner ſhall pay to the miller an halfpenny for every yard above 58, over and above the uſual price for milling a ſtockful or 58 yards. 5 *G.* 3. *c.* 51. *ſ.* 19.

And all diſputes between clothiers and millers, relating to the wages for milling, ſhall, if ſuch miller deſire it, and the matter in diſpute do not exceed 40*s.* be determined by one juſtice; who may, on complaint, ſummon the parties, adjudge damages, and give coſts not exceeding 10*s.* and levy the ſame by diſtreſs, if not paid in ten days. 5 *G.* 3. *c.* 51. *ſ.* 20.

The ſearchers ſhall, at the fulling mills, meaſure the cloths and ends or half cloths there milled, within ſix and not ſooner than four hours, after the ſame ſhall have been ſtreamed or waſhed in the goit or mill ſtream; and if the ſame ſhall not be ſtreamed or waſhed, then within four hours after they come out of the ſtock. 5 *G.* 3. *c.* 51. *ſ.* 3.

And ſuch ſearcher ſhall, on one end of every ſuch cloth, before it be carried from the mill, affix and rivet a ſeal of lead, to be furniſhed by the maker, and ſtamp in words and figures upon every ſuch rivet his name, and the name of the mill where he is ſtationed; and upon the reſidue of the ſeal, the length and breadth of ſuch cloth, together with the number of each of ſuch cloths milled at ſuch mill ſucceſſively, beginning at number 1 at the 25th of *March* yearly, and ſo continuing progreſſively to the 25th of *March* next following. 5 *G.* 3. *c.* 51. *ſ.* 3. 6 *G* 3. *c.* 23, *ſ* 2.

And ſhall enter in a book, to be provided by the treaſurer of the ſaid riding, the name and place of abode of the maker,

maker, the colour or ſort of the cloth, and the length, breadth, and number on the ſeal. 5 *G.* 3. *c.* 51. *ſ.* 3.

And ſhall give once a month, to the ſupervifor within the diſtrict, an account of all the cloths milled, meaſured, and ſtamped at ſuch mill. *id.*

And the owner ſhall pay to the ſearcher, for the ſeal of every whole cloth 35 yards long or upwards, 6 *d.* for every end or half cloth, leſs than 35 yards, and more than 30, 4 *d.* leſs than 30 yards, 3 *d.* Which ſums ſhall be accounted for by ſuch ſearcher to the ſaid treaſurer. *id.*

Searcher making default, ſhall, for the firſt offence, forfeit 20 *s.* for the ſecond offence, ſhall forfeit his office. 5 *G.* 3. *c.* 51. *ſ.* 4.

If the maker ſhall take away his cloth, before it be meaſured and ſtamped within the times before mentioned; or before the money be paid for ſtamping the ſame; or ſhall take away his cloth after nine o'clock in the evening, or before five in the morning, unleſs the ſame be meaſured and ſtamped; he ſhall forfeit 20 *s.* 5 *G.* 3. *c.* 51. *ſ.* 5.

And if any inſpector hath reaſon to ſuſpect, that any cloth ſhall be in the poſſeſſion of any merchant, dreſſer, or cloth worker, which hath not been truly ſtamped at the fulling mill; he may give notice thereof to ſuch perſon: which ſaid perſon ſhall give two hours notice to the ſaid inſpector, of the time when he intends to put the ſaid cloth into water, in order that he may attend the wetting and meaſuring thereof: And if ſuch perſon ſhall put the cloth into water, without ſuch notice to the ſaid inſpector; he ſhall forfeit 20 *s.* And if any ſupervifor or inſpector ſhall refuſe or neglect to attend for meaſuring and ſtamping any cloth or end of cloth as aforeſaid, for two hours after notice given to him; he ſhall forfeit 20 *s.* 6 *G.* 3. *c.* 23. *ſ.* 7, 8.

The maker of cloth called broad cloth, ſhall, after it is brought from the mill, and before it be put upon the tenter, meaſure the ſame, and affix and rivet a ſeal of lead upon the other end, and ſtamp thereon the length and breadth. 5 *G.* 3. *c.* 51. *ſ.* 6.

The owner of every tenter ſhall meaſure the ſaid tenter, and mark in figures the true length in yards (at 37 inches to the yard), beginning at number one, and marking every yard diſtinctly on the top bar on the foreſide; on pain of 5 *l.* 5 *G.* 3. *c.* 51. *ſ.* 22.

If any perſon ſhall ſtretch any cloth more than one yard (conſiſting of 37 inches) in every 20 in the length, or more than one inch in 12 in the breadth, beyond the mark

ſtamped

ſtamped by the ſearcher, inſpector, or ſuperviſor, who laſt meaſured the ſame; he ſhall forfeit, for the firſt half yard overſtretched in length 5 *s.* and for every quarter of a yard above ſuch half yard, 10 *s.* and for the firſt inch overſtretched in breadth, 5 *s.* and for every inch above the firſt, 10 *s.* 6 *G.* 3. *c.* 23. *ſ.* 15.

If any perſon ſhall willingly take off, alter, or counterfeit, deface, or cut out any ſeal affixed on the ſaid cloth as aforeſaid, or the figures or Letters thereon ſtamped, or therein woven or ſewed, before the cloth ſhall be put in papers for the preſs, or into the frizing mill: or if any inſpector or ſuperviſor ſhall find any cloth without ſuch ſeal as aforeſaid, or find ſuch ſeal defaced, counterfeited, or altered (unleſs accidentally loſt, or maliciouſly taken off); or ſhall find any cloth which ſhall appear by the ſtamp affixed thereon to be overſtretched, or the loom mark ſpecifying the name and place of abode of the maker to be cut out or altered; every perſon ſo offending, or the merchant, dreſſer, clothier, or owner, in whoſe cuſtody ſuch cloth ſhall be found, ſhall forfeit not exceeding 40 *s.* nor leſs than 20 *s.* 6 *G.* 3. *c.* 23. *ſ.* 11.

If any perſon ſhall uſe in dreſſing of cloth, any cards made with wire, or with teeth of iron or other metal; he ſhall forfeit 40 *s.* 5 *G.* 3. *c.* 51. *ſ.* 23.

Provided, that it ſhall be lawful for any perſon, in the ſtriking or plaining of cloth upon the tenters only, to uſe cards of wire, called fine hatter's cards, for the better laying the wool, and manufacturing the cloth, without being ſubject to the ſaid penalty. 6 *G.* 3. *c.* 23. *ſ.* 16.

The inſpector or ſuperviſor may, in the day time enter into any ſhops, out houſes, tenter grounds, or warehouſes, to ſearch; and any perſon obſtructing the ſame ſhall forfeit 10 *l.* 5 *G.* 3. *c.* 51. *ſ.* 11.

The ſuperviſors ſhall be daily employed in viſiting the mills, tenter-grounds, workſhops, and places within their diſtricts, and every ſuch ſuperviſor ſhall meaſure, and ſtamp with a ſeal of lead having his name impreſſed, ſo many of the ſaid cloths as he conveniently can; and keep an account thereof; and tranſmit the ſame, together with the accounts received by him from the ſearchers, to the juſtices at every quarter ſeſſions. *ſ.* 8.

And if the inſpector or ſuperviſor ſhall find any cloth or end or half cloth, falſely ſtamped by the ſearcher, above one inch in breadth in more than one third part of the length thereof, or above half a yard in length; he ſhall within ſeven days give information thereof to a juſtice:

and

and ſuch ſearcher ſhall, on conviction before ſuch juſtice, forfeit 10 *s.* 5 *G.* 3. *c.* 51. *ſ.* 9. 6 *G.* 3. *c.* 23. *ſ.* 3.

Provided, that it ſhall not be lawful for any inſpector or ſupervifor, to enter into any houſe, warehouſe or outhouſe, of any merchant, dreſſer, or other dealer in cloth (unleſs ſuch places ſhall be made uſe of for dreſſing, tentering, or keeping of wet or undreſſed cloth) under pretence of ſearching for or examining any woollen cloth; or to ſearch or examine any cloth, after the ſame ſhall be put up in papers for preſſing, or ſent to be frized, or otherwiſe hath been fully manufactured, or fitted for exportation or home conſumption. 6 *G.* 3. *c.* 23. *ſ.* 10.

If the maker ſhall expoſe any cloth to ſale without ſuch mark as aforeſaid, or without ſeals as before directed; he ſhall forfeit 20 *s.* for every ſuch piece. *ſ.* 18.

The buyer, if he ſuſpects any fraud, may within 40 days after the ſale and delivery of ſuch cloth (and before the ſame ſhall have been raiſed, rowed, dreſſed, dyed, or put in water) put the ſame into cold water not exceeding four hours; and after the ſame ſhall be fully wet, ſhall hang the ſame acroſs a plain rail or horſe tree, not leſs than two hours, nor more than four; and then immediately cauſe the ſame to be meaſured by ſome ſworn ſearcher, inſpector, or ſupervifor: And if there ſhall be found a leſs quantity in length or breadth, in more than one third part of the length thereof than is mentioned on any of the ſeals; the ſaid ſearcher, inſpector, or ſupervifor who laſt meaſured the ſame, ſhall within three days give information thereof to a juſtice; and ſearcher or ſupervifor who affixed ſuch falſe ſeal, being convicted thereof before ſuch juſtice, on the oath of ſuch ſearcher, inſpector, or ſupervifor who laſt meaſured the ſaid cloth, or of any other credible witneſs, ſhall forfeit for the firſt inch in breadth or half yard in length that ſuch cloth or end of cloth ſhall fall ſhort, 5 *s.* and for every other inch in breadth or half yard in length the further ſum of 10 *s.* And if ſuch ſearcher, inſpector, or ſupervifor who laſt meaſured the cloth, ſhall not in three days give information as aforeſaid; he ſhall, on conviction before ſuch juſtice, forfeit 40 *s.* and his office. 6 *G.* 3. *c.* 23. *ſ.* 4.

And where ſuch falſe ſeal ſhall be found, the ſearcher, inſpector, or ſupervifor, who laſt meaſured the ſame, ſhall affix and rivet a new ſeal, with his name on the rivet, adding the word inſpector or ſupervifor; and on the ſeal, the true length (accounting 37 inches to the yard in length), and the breadth, between the liſts, in inches. And this

ſhall

ſhall be the rule in payment: Except that (in order to diſcourage ſuch fraud) the buyer may retain out of the price double the value of ſo much as was overſtamped; unleſs the maker ſhall within three days after notice of ſuch deficiency, take the cloth again, and repay the purchaſe money, together with reaſonable expences. *ſ.* 5.

And if the ſeller or buyer ſhall ſuſpect that this laſt admeaſurement is falſe; he may, in ſeven days, give information thereof to a juſtice: And if ſuch ſearcher, inſpector, or ſupervifor who laſt meaſured the ſame, ſhall be convicted of ſuch offence, by the oath of one witneſs, before ſuch juſtice; he ſhall, for the firſt inch in breadth or half yard in length falſely meaſured as aforeſaid, forfeit 20*s.* and if ſuch cloth or end of cloth ſhall exceed or fall ſhort more than two inches in breadth, or one yard in length of the meaſure ſo ſtamped by him, he ſhall forfeit his office. *ſ.* 6.

And any perſon, againſt whom ſuch information ſhall be made by any merchant, owner, or dreſſer of cloth, for falſe ſealing or ſtamping, may, within two days after notice given to him of ſuch information, go to the houſe of ſuch merchant, owner, or dreſſer, and requeſt to ſee the cloth, and examine whether the charge againſt him be juſt and whether any fraud hath been committed by ſuch merchant, owner, or dreſſer: And if any merchant, owner, or dreſſer ſhall refuſe to permit him to ſee or examine ſuch cloth (unleſs the ſame ſhall before that time be put in papers for preſſing, or ſent to be frized) the proſecution ſhall ceaſe; and if ſuch buyer ſhall refuſe, he ſhall loſe all benefit of deduction out of the price as aforeſaid. *ſ.* 12.

And the treaſurer may deduct the ſums forfeited by the ſearchers, inſpectors, and ſupervifors, out of their ſalaries. 5 *G.* 3. *c.* 51. *ſ.* 16.

Informations of offences (not otherwiſe directed) ſhall be made (on oath by the 5 *G.* 3. *c.* 51.) within ten days after the offence ſhall be diſcovered; the ſame to be heard and determined, on the oath of one witneſs, before one juſtice (not being a dealer in woollen cloth, nor occupier of a fulling mill): And the penalties, after deducting charges of the conviction, to be diſtributed, half to the informer, and half to the treaſurer of the ſaid *Weſt Riding*; the part belonging to the treaſurer ſhall be received by the juſtice, and by him paid to an inſpector or ſupervifor; and the ſaid juſtice ſhall, within three months ſend an account thereof to the ſaid treaſurer. 6 *G.* 3 *c.* 23. *ſ.* 19.

And

And if any offender ſhall, for 10 days after conviction, and notice thereof given to him at his dwelling houſe or laſt place of abode, refuſe or neglect to pay any forfeiture by him incurred; or ſhall not give notice of appeal: then, and not before, the ſaid juſtice, or any other ſuch juſtice (on certificate of the conviction ſent to him), ſhall iſſue his warrant of diſtreſs, to the conſtable of the town or place, or bailiff of the liberty, where the offender dwells, requiring him to levy the ſame by diſtreſs: and where no ſufficient diſtreſs can be had, the ſaid juſtice ſhall commit him to the houſe of correction for any time not exceeding three months. *ſ.* 20.

Perſons aggrieved by any order or determination of ſuch juſtice, may appeal to the next ſeſſions which ſhall not be held within 14 days after the cauſe of appeal ſhall ariſe, giving ten days notice: And the ſeſſions may allow coſts to either party, to be levied and paid as uſual in caſes of appeal from any order of the juſtices to the ſeſſions. *ſ.* 21.

And the juſtices, inſpectors, and ſuperviſors ſhall return to the ſeſſions from time to time, an account in writing of all convictions that have happened within their knowledge, and of the penalties levied and made payable to the treaſurer: And the inſpectors and ſuperviſors ſhall pay to the treaſurer, within three months after receipt thereof, all ſums by them received on account of ſuch convictions. And every perſon neglecting or refuſing to tranſmit ſuch account, within 20 days next after any ſuch ſeſſions; or to pay ſuch ſums within three months after receipt thereof; ſhall, on conviction on the oath of one witneſs, before two juſtices, forfeit 10 *l.* *ſ.* 22.

The money in the treaſurer's hands, received on account of the duties and forfeitures ſhall, after paying the expences of the acts, be applied for payment of the ſalaries of the ſearchers or meaſurers, inſpectors, and ſuperviſors, in ſuch manner and proportion, as the ſaid juſtices at their midſummer ſeſſions yearly ſhall appoint. *ſ.* 24.

And the juſtices, after payment of the charges of the acts, at their ſaid midſummer ſeſſions yearly, may make order for increaſing or diminiſhing the rates to be paid for meaſuring, ſtamping, and ſealing, ſo as never to exceed the rates above ſpecified. *ſ.* 25.

XIII. Con-

XIII. Concerning burying of the dead in woollen cloth.

1. By the 30 *C.* 2. *c.* 3. (which is required to be given in charge at the aſſizes and ſeſſions) no corpſe of any perſon (except thoſe who ſhall die of the plague) ſhall be buried in any ſhirt, ſhift, ſheet, or ſhroud, or any thing whatſoever made or mingled with flax, hemp, ſilk, hair, gold, or ſilver, or in any ſtuff or thing, other than what is made of ſheep's wool only, or be put into any coffin lined or faced with any ſort of cloth or ſtuff, or any other thing whatſoever, that is made of any material but ſheep's wool only. *ſ.* 3, 9, 10.

2. And the miniſters ſhall take an exact account, and keep a regiſter book, to be provided at the charge of the pariſh, and make a true entry therein of all perſons buried in their reſpective pariſhes or precincts, or in ſuch common burial places as their reſpective pariſhioners are uſually buried. *ſ.* 4, 7.

3. Within eight days after the interment, ſome relation of the party deceaſed, or other credible perſon, ſhall cauſe an affidavit (A) in writing to be made under the hands and ſeals of two or more credible witneſſes, ſetting forth that ſuch deceaſed perſon was not put in, wrapt, or wound up, or buried in any ſhirt, ſhift, ſheet, or ſhroud, made or mingled with flax, hemp, ſilk, hair, gold, or ſilver, or other than what is made of ſheep's wool only, or in any coffin lined or faced with any cloth, ſtuff, or any other thing whatſoever, made or mingled with flax, hemp, ſilk, hair, gold, or ſilver, or any other material but ſheep's wool only: And ſhall bring the ſame and make oath thereof, before the mayor, or a juſtice of the peace, or maſter of chancery [and if no juſtice ſhall reſide or be to be found in the pariſh where the party is interred, then to any parſon, vicar, or curate, in any other pariſh within the county, 30 *C.* 2. *c.* 1.] who ſhall adminiſter the oath and atteſt the ſame under their hands upon ſuch affidavit, *gratis*. *ſ.* 4, 5.

4. And ſhall (within eight days as aforeſaid) bring the ſame ſo ſigned and atteſted, to the miniſter; who ſhall enter the ſame in the regiſter. *ſ.* 4, 7.

5. And if no relation of the party buried, or other perſon, ſhall bring ſuch affidavit as aforeſaid, Then the goods and chattels of the party deceaſed ſhall be liable to the forfeiture of 5 *l.* to levied by diſtreſs, by warrant of the chief

chief magiſtrate in any town corporate, or of any juſtice of the peace: Or in default thereof, by like diſtreſs of the goods of the perſon in whoſe houſe the party died: or of any that had a hand in putting ſuch perſon into any ſhirt, ſhift, ſheet, ſhroud, or coffin, or did order or diſpoſe the doing thereof; and in caſe ſuch perſon were a ſervant and died in the family of his or her maſter or miſtreſs, the ſame ſhall be levied on the goods of ſuch maſter or miſtreſs; and if ſuch perſon died in the family of his or her father or mother, then the ſame ſhall be levied on the goods of his or her father or mother: Which ſaid forfeiture ſhall be levied, paid, and allowed out of the eſtate of the ſaid deceaſed perſon, before any ſtatute, judgment, debt, legacy, or other duty whatſoever. *ſ.* 4.

6. And in ſuch caſe, where no affidavit ſhall be brought in eight days as aforeſaid, to the miniſter where the party was buried, he ſhall forthwith give, or cauſe notice (B) thereof to be given in writing under his hand, to the churchwardens or overſeers; on pain of 5 *l.* with full coſts (provided the ſuit be commenced in ſix months) one fourth to the king, two fourths to the poor where ſuch perſon offending dwells, and one fourth to him that ſhall inform and ſue. *ſ.* 5, 6.

And moreover, where no ſuch affidavit ſhall be brought to him within ſuch time, he ſhall enter a memorial thereof in the ſaid regiſtry, againſt the name of the party interred, and of the time when he certified the ſame to the churchwardens or overſeers. *ſ.* 7.

7. The ſaid churchwardens or overſeers ſhall within eight days after ſuch notice (on like pain as the miniſter) repair to the chief magiſtrate, if ſuch party was buried in a town corporate, or elſe to a juſtice of the peace: Which ſaid juſtice or magiſtrate, on certificate from ſuch miniſter, ſhall (on the like pain) forthwith grant a warrant (C) for the levying of the ſaid forfeiture on the goods of the parties before mentioned, rendering the overplus, all reaſonable charges being firſt deducted; half of which ſhall be to the poor, and half to the informer. *ſ.* 5.

8. And when the overſeers ſhall account, they ſhall give an account of the name and quality of every perſon interred within their pariſh from the time of their former account, and of ſuch certificate as came to their hands from ſuch miniſter, and of their levying the penalties, and of their diſpoſal thereof; on pain of 5 *l.* to be levied by diſtreſs, by warrant of the juſtices, or two of them, to whom they ſhall account. And no overſeers account ſhall be

allowed, until they ſhall have therein accounted for the burials as aforeſaid. *ſ.* 8.

XIV. Againſt importation of woollen cloth.

No foreign woollen cloth ſhall be imported, on pain of forfeiture, and further puniſhment at the king's will. 11 *Ed.* 3. *c.* 3. 4 *Ed.* 4. *c.* 1. *ſ.* 7.

XV. Encouragement of the exportation of woollen manufactures.

Woollen manufactures ſhall be exported cuſtom free. 11 & 12 *W. c.* 20.

A. Affidavit for burying in woollen.

Weſtmorland. BE *it remembred, that on the* ——— *day of* ——— A. W. *of* ——— *yeoman, and* B. W. *of* —— *yeoman, being two credible perſons, do make oath, That* A. D. *late of* ——— *in the pariſh of* —— *in the county aforeſaid, on the* —— *day of this preſent month of* —— *was not put in, wrapt or wound up, or buried in any ſhirt, ſhift, ſheet, or ſhroud, made or mingled with flax, hemp, ſilk, hair, gold, or ſilver, or other than what is made of ſheep's wool only, or in any coffin lined or faced with any cloth, ſtuff, or any other thing whatſoever made or mingled with flax, hemp, ſilk, hair, gold or ſilver, or any other material but ſheep's wool only.*

A. W.
B. W.

Sworn before me, being one of his majeſty's juſtices of the peace for the ſaid county [or, *vicar of* ——— *in the ſaid county, there being no juſtice of the peace reſiding (or to be found) in the ſaid pariſh of* ——] *the day and year aboveſaid.*

J. P.

B. The

B. The miniſter's notice of affidavit of burying in woollen not being brought.

Weſtmorland. { To the churchwardens and overſeers of the poor of the pariſh of —— in the ſaid county.

I A. M. *miniſter of the pariſh of —— aforeſaid, in the county aforeſaid, do hereby give you notice, that on the —— day of —— the body of* A. D. *was buried within the ſaid pariſh, and that no perſon whatſoever hath brought to me any affidavit purſuant to the ſtatute made for burying in woollen. Witneſs my hand, the —— day of ——.*

C. Warrant to levy the penalty for not burying in woollen.

Weſtmorland. { To the conſtable of ——

WHEREAS *it duly appears to me —— one of his majeſty's juſtices of the peace for the ſaid county, that* A. D. *late of —— deceaſed, on the —— day of —— was buried within the pariſh of —— in the county aforeſaid, and that no affidavit hath been brought within eight days afterwards to the miniſter of the ſaid pariſh, that the ſaid* A. D. *was buried in no other materials but ſheep's wool only, purſuant to the ſtatute in that caſe made*; [*and whereas it alſo duly appeareth unto me, that the ſaid* A. D. *had no goods and chattels at the time of his death as aforeſaid*; *and that he the ſaid* A. D. *did die in the houſe of* A. O. *of —— yeoman, at —— aforeſaid, in the county aforeſaid*; Or, *that* A. O. *of —— yeoman, had a hand in, or did order and diſpoſe, the putting the ſaid* A. D. *deceaſed in a ſhirt, ſhift, ſheet, ſhroud or coffin, contrary to the form of the ſtatute aforeſaid*; or, *that* A. M. *of —— yeoman, at the time of the death of him the ſaid* A. D. *was maſter of him the ſaid* A. D. *and that he the ſaid* A. D. *ſervant to the ſaid* A. M. *did die in the houſe of him the ſaid* A. M. *at —— aforeſaid*; or, *that* A. F. *of —— yeoman, was father to the ſaid* A. D. *and that he the ſaid* A. D. *did die in the family of him the ſaid* A. F. [or as the caſe ſhall be]: *Theſe are therefore to commond you forthwith to levy the ſum of* 5 l. *by diſtreſs and ſale of the goods and chattels which he the ſaid* A. D. *had at the time of his death* [Or, *of the goods and chattels of him the ſaid* A. O.] *rendering*

the overplus to — your reaſonable charges being firſt deducted: One moiety of which ſaid ſum of 5 l. *you ſhall pay to the overſeers for the uſe of the poor of the ſaid pariſh where he the ſaid* A. D. *was buried, and the other moiety to* A. I. *of —— yeoman, who informed me of the ſaid offence, and did ſue for the ſaid forfeiture Herein fail you not. Given under my hand and ſeal at —— in the county aforeſaid, the ——— day of —— in the —— year of the reign of ——.*

Wreck.

Wreck, what.

1. WRECK of the ſea, in legal underſtanding, is applied to ſuch goods, as after ſhipwreck at ſea are by the ſea caſt upon the land; and therefore the juriſdiction thereof pertaineth not to the lord admiral, but to the common law. 2 *Inſt.* 167.

Jetſam, flhtſom & lagan.

2. None of thoſe goods which are called *jetſam* (from being *caſt* into the ſea while the ſhip is in danger, and after periſheth) or thoſe called *flotſam* (from *floating* upon the ſea after ſhipwreck) or thoſe called *legan* or *ligan* (goods thrown overboard before the ſhipwreck, which ſink to the bottom of the ſea) are to be eſteemed wreck, ſo long as they remain upon the ſea, and are not caſt upon the land by the ſea; but if any of them are caſt upon the land by the ſea, they are wreck. *Wood, b. c.* 2.

Living creature eſcaping.

3. Alſo by the 3 Ed. 1. c. 4. *Where a man, a dog, or a cat eſcape quick out of the ſhip, the ſhip or any thing therein ſhall not be adjudged wreck.*

A man, a dog, or a cat] Which ſtatute being but declaratory of the common law, theſe three inſtances are only put for examples; for beſides theſe two kinds of beaſts, all other beaſts, fowls, and other living things are underſtood, whereby the property of the goods may be known. 2 *Inſt.* 167, 168.

Eſcape quick out of the ſhip] If a ſhip be ready to periſh, and all the men therein (for the ſafeguard of their lives) leave the ſhip, and after, the forſaken ſhip periſheth; if any of the men be ſaved and come to land, the goods are not loſt. 2 *Inſt.* 167. *ſt.* 1. *c.* 11.

To whom the wreck belongeth

4. By the 17 Ed. 2. *The king ſhall have wreck of the ſea throughout the realm.*

And the cauſe wherefore originally wreck was given to the crown, ſtood upon two main maxims of the common law. 1. That the property of all goods whatſoever muſt be in ſome perſon. 2. That ſuch goods as no ſubject can claim any property in, do belong to the king by his prerogative. 2 *Inſt.* 167.

Seizing wreck not felony.

5. The taking of goods whereof no one had a property at the time, is not felony; and therefore he who takes away a wreck, before it is ſeized by the perſon who has a right thereto, is not guilty of felony, and ſhall only be puniſhed by fine, or the like. 1 *Haw.* 93, 94. That is to ſay, he is not guilty of felony by the common law; but it is otherwiſe by the ſtatutes here following.

Aſſiſting ſhips in diſtreſs.

6. To preſerve ſhips ſtranded or in diſtreſs, from being plundered by the country people, it is enacted by the 12 *An. ſt.* 2. *c.* 18. and the 26 *G.* 2. *c.* 19. as follows: (Which ſaid act of the 12 *An.* is required to be read in the church four times a year, in all ſea port towns, and on the coaſt.)

The juſtice of the peace, mayor, bailiff, collector of the cuſtoms, or chief conſtable, who ſhall be neareſt to where any ſhip ſhall be ſtranded or caſt away, ſhall forthwith give publick notice for a meeting to be held as ſoon as poſſible of the ſheriff or his deputy, the juſtices of the peace, mayors, coroners, and commiſſioners of the land tax, or any five of them, who ſhall employ proper perſons for ſaving the ſame; and ſhall command the conſtables neareſt to the ſea coaſts, to call together as many men as ſhall be thought neceſſary, to aſſiſt. And alſo the officers of exciſe ſhall be proper officers to put theſe acts in execution. And within the cinque ports, the lord warden of the cinque ports, the lieutenant of *Dover caſtle*, the deputy warden of the cinque ports, the judge official, and commiſſary of the court of admiralty of the cinque ports, ſhall put the ſame in execution there.

And any juſtice of the peace, in the abſence of the high ſheriff, may take ſufficient power of the county.

And they may command all ſhips at anchor near to aſſiſt; and if the officer of ſuch ſhip ſhall refuſe or neglect, he ſhall forfeit 100*l.* with coſts, to the officer of the ſhip in diſtreſs.

And to prevent confuſion, and contradictory orders, the perſons aſſembled to ſave any veſſel or goods as aforeſaid, ſhall conform in the firſt place to the orders of the maſter or other officer or owner, or perſons employed by them; and for want of their preſence or directions, then to the

orders of the officers of the cuſtoms, next to thoſe of the officers of exciſe, then of the ſheriff or his deputy, then of a juſtice of the peace, then of a mayor, then of the coroner, then of a commiſſioner of the land tax, then of a chief conſtable, then of a petty conſtable; and any perſon acting contrary to ſuch orders, ſhall forfeit not exceeding 5*l.* to be levied by warrant of one juſtice, and in caſe of non-payment, to be committed to the houſe of correction, not exceeding three months.

And every ſuch ſheriff, juſtice, mayor, coroner, lord of a manor, under ſheriff, or commiſſioner of the land tax, ſhall have 4*s.* a day during his attendance, out of the goods ſaved.

And if any perſon not impowered as above ſhall endeavour to enter on board ſuch veſſel, or ſhall deface the marks of the goods; he ſhall within 20 days make double ſatisfaction to the party grieved, at the diſcretion of the two next juſtices; or in default thereof, ſhall be ſent by them to the next houſe of correction, to be kept to hard labour for 12 months.

And if any perſons not employed by the maſter or owner, ſhall in the abſence of perſons employed by them, ſave any veſſel or goods, and cauſe them to be carried for the benefit of the owners into port, or any near adjoining cuſtom houſe, or place of ſafe cuſtody immediately giving notice thereof to a juſtice, magiſtrate, cuſtom houſe or exciſe officer; they ſhall be intitled to a reaſonable reward for the ſame, to be adjuſted by three neighbouring juſtices, which may be recovered by action at law: Or the ſame may be adjuſted by the officers abovementioned. And if the ſaid ſalvage (and the charges of 4*s.* a day as abovementioned) ſhall not be paid in 40 days after the ſervices performed, the officer of the cuſtoms concerned in the ſalvage, may borrow or raiſe ſo much money as ſhall pay the ſame, upon a bill or bills of ſale, under his hand and ſeal, of the veſſel, or cargo, or part thereof; redeemable nevertheleſs on payment of the principal, and intereſt at 4 *per cent.*

And more generally, by another clauſe it is enacted, that all perſons who ſhall act or be employed in preſerving any ſuch veſſel or cargo, ſhall be paid a reaſonable ſalvage, to be adjuſted by three neighbouring juſtices as abovementioned.

And if any perſon ſhall be aſſaulted, beaten and wounded, in the exerciſe of his duty in the ſalvage of any veſſel or goods, the offender on conviction by indictment at the

aſſizes

aſſizes or ſeſſions, ſhall be tranſported for ſeven years. And ſuch perſons moleſting the preſervation of the ſhip may be repelled by force.

And if any perſon ſhall plunder, ſteal, take away, or deſtroy any goods belonging to ſuch ſhip in diſtreſs, or which ſhall be wrecked or ſtranded (whether any living creature be on board or not) or any tackle, proviſion, or part of ſuch ſhip; or ſhall beat or wound, with intent to kill, or otherwiſe wilfully obſtruct the eſcape of any perſon endeavouring to ſave his life from ſuch ſhip, or the wreck thereof; or ſhall put out any falſe light, with intent to bring any veſſel into danger; he ſhall be guilty of felony without benefit of clergy. Provided that when goods of ſmall value ſhall be ſtranded or caſt on ſhore, and ſtolen without circumſtances of cruelty, outrage, or violence; the offenders may be proſecuted for petit larceny only.

And if any perſon ſhall make any hole in any ſuch ſhip in diſtreſs, or ſteal any pump belonging thereto, or wilfully do any thing tending to the immediate loſs of ſuch ſhip, he ſhall be guilty of felony, without benefit of clergy.

And if oath be made before a magiſtrate, of any ſuch plunder or theft, or of the breaking of any ſuch ſhip, and the examination in writing thereupon taken be delivered to the clerk of the peace, he ſhall cauſe the offender to be forthwith proſecuted for the ſame, either in the county where the fact ſhall be committed, or in any county next adjoining, in which adjoining county any indictment may be laid by any other proſecutor; and if the fact be committed in *Wales*, then the proſecution ſhall or may be carried on in the next adjoining *Engliſh* county; and the neceſſary charges of ſuch proſecution ſhall be paid by the treaſurer of the county where the fact ſhall be committed, as the juſtices in ſeſſion ſhall order: and if the clerk of peace ſhall neglect his duty herein, he ſhall forfeit 100*l.* to him who ſhall ſue.

And one juſtice, upon information on oath, of any part of the cargo or effects of any veſſel, loſt or ſtranded near the coaſts, being unlawfully conveyed or concealed, or of ſome reaſonable cauſe of ſuſpicion thereof, may iſſue his warrant for ſearching as in other caſes of ſtolen goods: And if the ſame be found in any houſe or other place, or in the poſſeſſion of any perſon not legally authoriſed to have the ſame; and the owner or occupier, or perſon in whoſe poſſeſſion the ſame ſhall be found, ſhall not immediately upon demand deliver the ſame; ſuch juſtice, on proof of ſuch refuſal, ſhall commit him to the common gaol for ſix months, or until he ſhall have payed treble the value thereof.

And if any perſon ſhall offer to ſale any ſuch goods unlawfully taken away, or reaſonably ſuſpected ſo to have been, the perſon to whom they are offered, or any officer of the cuſtoms or exciſe, or conſtable, may ſeize the ſame; and ſhall, with all convenient ſpeed, carry the ſame, or give notice thereof, to one juſtice; and if ſuch perſon ſhall not in ten days make out his property therein, to the ſatisfaction of the juſtice, they ſhall be delivered over to the rightful owner, on payment of a reaſonable reward (to be aſcertained by the juſtice) to the ſeizor; and the juſtice may commit ſuch offender to the common gaol for ſix months, or till he ſhall have paid treble value. And if any perſon ſhall diſcover to any juſtice, magiſtrate, cuſtom houſe or exciſe officer, where any ſuch goods are wrongfully bought, ſold, or concealed, he ſhall be intitled to a reaſonable reward, to be adjuſted as the ſalvage.

And the officer of the cuſtoms who ſhall act in preſerving any veſſel or cargo, ſhall as ſoon as conveniently may be, cauſe or procure all perſons belonging to the veſſel, and others who can give an account thereof, to be examined on oath before a juſtice, as to the name or deſcription of the veſſel, the names of the maſter and owners, and of the places from or to which the veſſel was bound, and the occaſion of the diſtreſs; which examination the juſtice ſhall take in writing, and ſhall deliver a copy thereof to the ſaid officer of the cuſtoms, who ſhall forthwith tranſmit the ſame to the ſecretary of the admiralty, who ſhall publiſh the ſame in the next *London* gazette, or ſo much thereof as ſhall be neceſſary for the information of the perſons intereſted or concerne therein.

And if no perſon ſhall appear to claim the goods ſaved, the officer of the cuſtoms ſhall apply to three of the neareſt juſtices, who ſhall put him or ſome other reſponſible perſon in poſſeſſion, taking an account in writing of the goods, to be ſigned by the ſaid officer: and if they be not claimed in a year, they ſhall be ſold (and if periſhable, ſhall be forthwith ſold) and the money returned to the exchequer, till claimed by the owner.

But this ſhall not prejudice the right of any lords of manors, or others, lawfully claiming wreck, or goods, *flotſam*. *jetſam*, or *lagan*.

CONCLUSION.

HAVING thus finiſhed the work propoſed, it may be requiſite, upon the whole, to ſubjoin one ſingle reflection, which will occur to every reader, in peruſing almoſt every one of the large titles of this book; and that is concerning the poſſibility and expediency of reforming the ſtatute law. The ſtatutes at large, from the very nature of the thing, have in proceſs of time become very cumberſome, and very intricate. They are not to be purchaſed but for a larger ſum of money, nor to be underſtood without a greater expence of time, than a wiſe man would often chuſe to employ in that way.

The courſe to be taken in that matter ſeems to be this:

Firſt, actually to repeal all thoſe ſtatutes, and parts of ſtatutes, which are *virtually repealled* by ſubſequent contradictory ſtatutes.

Secondly, to repeal all thoſe ſtatutes, which are *obſolete*, and grown out of uſe, by the alteration of times and circumſtances.

Thirdly, to repeal all thoſe ſtatutes, which being neither contradicted by ſubſequent ſtatutes, nor become obſolete, yet are rendered *uſeleſs* by ſubſequent ſtatutes enacting the ſame things over again, with alterations and amendments.

Fourthly, to repeal, or alter, all thoſe ſtatutes which are *frivolous*, that is, which poſſibly cannot, or probably never will be executed: ſuch as thoſe which appoint an offender to be whipped by the hands of the common hangman, where perhaps there is no ſuch officer, or which prohibit an offence under a very ſmall penalty to be recovered in the courts at *Weſtminſter*, where the reward will not countervail the expence recovering it.

Fifthly, to omit all thoſe ſtatutes, which although enacted to be publick ſtatutes, yet are only of *private concern*; ſuch as thoſe for bridges in particular plabes, or paving the ſtreets in ſuch a market town; and the like.

Sixthly, as to the reſt, to lay all the ſtatutes, and clauſes of ſtatutes together, which relate to the ſame ſubject, and out of the whole to compoſe one, two, or more uniform and conſiſtent ſtatutes; and then to repeal all thoſe other, as workmen deſtroy the ſcaffolding when they have erected the building.

I know but of one material objection, againſt this method of proceeding: and that is, that the law being now for the moſt part well ſettled upon the ſtatutes, notwith-

ſtanding their acknowledged diſorder and confuſion, this would tend to unſettle all again, by breaking the connexion which there is between one ſtatute and another, and one part of a ſtatute and another, altering the words and phraſes, and after all perhaps not much mending the matter, ſince it is poſſible that the new ſtatutes may be as liable to objections as the former were.

But this is an argument not ſo much againſt the thing itſelf, as againſt the manner in which it may be executed. As to breaking the connexion, it is certain that for the moſt part there is no connexion; and where there is, that may eaſily be preſerved: And it ought to be laid down as an invariable rule, to retain as much as poſſible the identical words and ſentences of the former ſtatutes; only rejecting what is ſuperfluous, inſerting the clear law as it now ſtands, and putting the ſame into a form more regular, conciſe, and eaſy. And this ſeemeth no way impoſſible to be done, by any perſon of a tolerable underſtanding, endowed only with a clear head, and much patience.

APPENDIX,

CONCERNING THE OFFICE OF

JUSTICES of the PEACE,

In that Part of GREAT-BRITAIN, called

SCOTLAND.

APPENDIX.

SINCE the union of the two kingdoms of *England* and *Scotland*, it is matter of curioſity, and may be of uſe, to inquire how the law ſtands, with reſpect to the office of a juſtice of the peace in that part of the united kingdom called *Scotland*; what connexion there is between the laws of the ſeveral kingdoms in this reſpect; and how by degrees they coaleſce (as it were) and draw nearer to each other every ſeſſion of parliament.

Before the inſtitution of juſtices of the peace in *England* (which was not until the year 1327, in the firſt year of the reign of king *Edward* the third) the peace was preſerved within the ſaid kingdom of *England*, by *conſervators* choſen for that purpoſe in the county court; and there were other conſervators by virtue of their office, as coroners, and ſheriffs within the county, high conſtables within the ſeveral hundreds, and the petty conſtable within the decennary. Every man in the decennary was ſurety for the reſt; or if there was any for whom the reſt would not become bound, he was to be impriſoned till he could find ſuch ſurety.

The view of *frank pledge* in the leet court, was the offſpring of this inſtitution; wherein the ſuitors to the court were to take the oath of allegiance, and find ſureties or pledges to keep the king's peace; or otherwiſe were to be kept in priſon. The chief man of this pledge, was the borſholder, borrowhead, or headborow; from the *Saxon borge*, *borhoe*, or *borrow*, which ſignifieth a pledge.

We find in the *Scotch* law, of very antient time, ſomething not unlike to this, under the name of LAW BORROWS.

Law borrows, ſaith lord *Stair*, (as the word itſelf imports,) ſignifies caution found to do nothing but by order of law. For a *burrow* or *burgh*, in the ancient *Scotch* language, is a cautioner, and *law burrows* is caution to keep the law; for the ſafety and ſecurity of the people, and

to

to prevent evil acts from being done. *Stair, B. 1. Tit. 9. ſ. 30.*

And letters of law-borrows are granted, upon the complainant's ſwearing that he dreads hodily harm from the perſon complained of; or it hath been allowed ſufficient, if he gave other evidence of the party's ill inclination towards him, tho' he did not ſwear that he was afraid of him, which might be interpreted as diſhonourable. *Stair, B. 4. Tit. 48. ſ. 2.*

In the *Regiam majeſtatem*, we find this ancient law: "Quha ever is *borgh* for ane other, to ſtand to richt in "anie action perteining to the king's mercie, as anent "the breaking of the king's peace, or anie other; gif he "can not produce him for quohm he is pledge be reaſon of "his borrowgange, he ſall fall in the king's mercie, and "thereby ſall be quite and frie of his borrowgange." *Reg. Maj. B. 3. c. 1. ſ. 19* *.

In the ninth parliament of *James* the firſt, in the year 1429, *Statute* 129: "It is ſtatute and ordained, that gif "onie of the kingis liege, hes oney doubt of the life, "outher be deed or mannance or violent preſumption, and "he aſk ſovertie of the partie that the plaint is maid upon, ſo that the partie plaintiſe make pruif of the deed "or mannance or of the violent preſumption maid or "done till him, be his aith or other ſufficient pruiſe, and "the ſchireffe do not that affeires till his office in that "caſe, he ſall be in fourtie pund to the king, and aſſyth "the partie."

In the 6th parliament of *James* the ſecond, 1449; *Stat.* 6. "It is ordained, that general peace be proclaymed and "keiped out-throw all the realme, that all men may travel ſurelie and ſickerly in merchandice and otherwaies in "all places throw the land, ſwa that na man neede till "have aſſurance ane of uther, but that the kingis peace "be

* Whether the *Regiam majeſtatem* was copied from *Glanville*, who was lord chief juſtice of *England* towards the end of the reign of king *Henry* the ſecond, or *Glanville*'s book was taken from the *Regiam majeſtatem*, is not material to the preſent purpoſe: In either caſe it ſhews, that this was part of the law of *Scotland*, in thoſe early times. That the *Regiam majeſtatem* was indeed copied from *Glanville*, hath (I think) been made apparent, from the *internal* evidence thereof, in comparing the books together, by the learned Mr. *Davidſon*, one of the clerks of the ſignet at *Edinburgh*, in a ſmall pamphlet lately publiſhed upon that ſubject; wherein he obſerves, that *Glanville*'s book is regular, methodical, and conſiſtent throughout, and withal hath his name prefixed to it; whereas the *Regiam majeſtatem* was compoſed by no body knows who, and goes out of *Glanville*'s method for no other aſſignable reaſon but only to diſguiſe the matter, and thereby is rendred confuſed, unſyſtematical, and in many places contradictory.

" be aſſurance till all men. And quha that offendis there-
" in, to be puniſhed by the king or his officiares. And
" that the king make ſik officiares, that can weill and
" may weill puniſh ſik treſpaſſoures. And attour, gif ony
" perſon dreadis ane uther, that he paſſe to the ſchireffe
" or to the officiares that it effeires to, and make that
" knawin, or ſwear that he dreadis him; and they ſall
" take borrowes of peace, after the actes maid thereupon
" of before."

14 *Parl. James* 3d, 1487; *Stat.* 101. " It is thought
" expedient, ſtatute, and ordained, for the punition and
" and juſtifieing of ſik treſpaſſours as hes bene in times be-
" gane, after that they were taken and arreiſted be the
" crowners, and in default that they could find na bor-
" rowes, nor there was na caſtel to receive and keepe
" them in quhill the juſtice aire, and their-throw eſcaip-
" ed and was put fra the law; that therefore in time to
" cum, quhair onie crowner arreiſtis and takis ſik treſpaſ-
" ſoures, he ſall bring them to the ſchireſſe of the ſchire,
" quhilk ſchireffe ſall receive them and keep them in ſuretie
" and firmance, on our ſoveraine lordis expences (quhair
" it failzies of their awin gudes), quhill the nixt juſtice
" aire, and then preſente them to the juſtice."

3 *Parl. James* 4th, 1491; *Stat.* 27. " It is adviſed,
" ſtatute, and ordained, for the eſchewing of ſlaughter,
" fore-thought fellonie, and debait, that ſall happen be-
" twixt onie perſons in time to cum, be complaint maid to
" our ſoveraine lord, his chancellar, or juſtice; that the
" chancellar or preſident beand for the time with adviſe of
" the councel, and juſtice with adviſe of his aſſeſſoures,
" ſall put quhat paine of ſumme of money that they think
" expedient, the parties and their actiones beand con-
" ſiddered, that the partie compleinzieand ſall be harmeles
" and ſkaithles in his perſon or gudes, but fraude or guile,
" utherwaies then law will. And quhat judge or judges
" that takes this ſovertie, that they act the ſamin, or put
" in remembrance in their buik, that it may be ſchawin
" to our ſoveraine lord and his councel."

6 *Parl. James* 6th, 1579; *Stat.* 77. " Foraſmeikle as
" the paines of breaking of law-borrowes hes bene negligen-
" tlie taken up in time by gane, be reaſon the partie of-
" fended unto received na commoditie be the perſute of the
" action; therefoir it is ſtatute and ordained be our ſove-
" raine lord, with adviſe of the three eſtaites of this preſent
" parliament, that the paines of breaking of law-borrowes
" to be fund in time cumming, ſall be equallie divided, the

" ane

" ane halfe to our ſoveraine lordis uſe, and the other halfe " to apperteine to the partie offended unto, quha ſall have " action to perſew therfoir."

7. *Parl. James* 6th, 1581; *Stat.* 117. " Foraſmeikle " as ſindrie gude actes hes bene maid anent finding of law- " borrowes, for preſervation of the trewe and obedient ſub- " jectes from injuſt force and violence; and lately, for " their greater comfort, it was well ordained, that the " paines of law-borrowes ſuld be divided betwixt the king " and the pairtie offended unto: Nevertheleſſe, ſeeing the " paines of law-borrowes hes extended only in time bygane " for ſafetie of bodielie harme from the perſon of the com- " pleener; the malice of the wicked ſa increaſſis, as they " ceaſa not, be indirect meanes, and hunding out of lim- " mars, vagaboundes, and uthers not reſponſal, to invade " the innocent perſones, not onlie in their bodies, but to " rieve, ſteale, houch, or ſlay their oxen, horſes, and " other cattle, cut or deſtroy their cornes, or to cauſe eate " the ſame with beſtial, to hound and ſlay their ſheepe with " dogges, boaſt themſelves in ſik ſorte as they dare not lie " in their awin houſes, or to minace their ſervandes to lieve " their ſervice, quhairthrow their ground may be layed " waiſt, to the utter wrack and depauperating of the in- " nocentes: Quhairfoir, our ſoveraine lord, with adviſe of " his three eſtates in this preſent parliament, ordainis, that " all letters of law-borrowes ſall be direct in time cumming " at the inſtance of the pairties compleenand, chargeing the " perſones compleened upon to finde ſicker ſovertie and law- " borrowes that the compleeners, their wives, bairnes, ten- " nentes, and ſervandes, ſall be harmles and ſkaithles in " their bodies, landes, takkes, poſſeſſiones, gudes and " geare, and on na wayes to be moleſted or troubled " theirin be the perſones compleened upon, nor na uthers " of their cauſing, ſending, hounding-out, receipting, " command, aſſiſtance, and rati-habition, quhome they " may ſtoppe or let, directlie or indirectlie, utherwayes " nor be ordour of law and juſtice; under great paines, to " be modified be the lordes of ſeſſion, or uthers ordinar " judge.s"

11 *Parl. James* 6th, 1587; *Stat.* 86. " It is ſtatute " and ordained, that caution be found to the juſtice clerke " and his deputes, that letters of law-borrowes in times " cumming to be granted ſall be dewly execute upon all " perſons conteined therein, ather perſonally, or at their " dwelling places, and be open proclamation at the mer- " cat croces of the head burgh of the ſchire quhair the par-

" ties

" ties dwellis, betuixt aucht houres in the morning and " twelve houres at noone, ſummer and winter, in open " time of day, in preſence of famous witneſſes ſpecially " deſigned; and copies affixed upon the zettes or doores " of the dwelling houſes of the perſones conteined therein, " with the haill names; and an uther on the mercat croce, " under the paine of twa hundreth markes."

13 *Parl. James* 6th, 1593; *Stat.* 170. " It is ſtatute " and ordained by our ſoveraine lord and the three eſtaites, " that in time cumming the paines and unlawes of law- " borrowes, or for none-again-bringing of letter to the juſ- " tice clerke and his deputes, or for none-compeirance be- " fore the juſtice after ſovertie found, ſall bee, for every " erle or lorde, two thouſand pundes; for every great ba- " ronne, ane thouſand pundes; for every free-halder, ane " thouſand markes; for every fewer five hundred markes; " for every zeamanman, an hundred markes; for every " gentleman unlanded, twa hundred markes; of ilk per- " ſon ſummoned to paſs upon aſſize before the juſtice, ane " hundreth markes; and that the juſtice clerk and his de- " putes receive ſovertie according to the ſaidis paines in time " cumming and na uther ways, as they will anſwere upon " the dewtie and execution of their offices: And the ſaids " paines of law-borrowes to be divided equally betwixt the " king and the partie offended unto, conforme to the act " maid upon of before: And that the unlaw of all perſons " arreiſted and not compeirand at the firſt juſtice aire, over " all the realme, in time cumming, ſhall be twenty " pundes."

15 *Parl. James* 6th, 1597. *Stat.* 273, " Our ſove- " raine lorde and eſtates of parliament ſtatuts and ordains, " that the paines of contravention ſall be paid be the prin- " cipal party that is charged to find law-burrowes, albeit " he paſſe to the horne and finde not caution; and gif he " find caution, that baith he as principal, and als his cau- " tioner, ſall be ſubject to the payment thereof, at the op- " tion of the perſewer, as in all uther pecunial obligations,"

Mr. *M' Douall* * obſerves, as to the form of letters of law-borrows, that there is an injunction therein upon the meſſengers, to take the complainer's oath before ſerving them; for the complainer (he ſaith) doth not emit it at taking out of the letters, and therefore the meſſenger is conſtituted judge for that purpoſe. 1 *M' Douall.* B. 1. Tit. 10. Sect. 157.

And

* Who was afterwards one of the lords of ſeſſion, under the title of lord *Bankton*.

And if law-borrows are ſuſpected to be maliciouſly inſiſted for; the party againſt whom they are demanded may oblige the raiſer of them to particularize the grounds of his dreading harm. But ordinarily they are granted of courſe; and the meſſenger, before executing them, exacts the oath in general, and in abſence of the other party; but if he is preſent, he may oblige the charger to be ſpecial in his oath before the meſſenger, who in this reſpect officiates as a judge, and may either grant or refuſe to execute the letters, as he ſees cauſe upon adviſing the oath, and is anſwerable for his conduct in that reſpect. *Id.* Sect. 167.

But here it ſeemeth that a diſtinction ought to be made, between letters of law-borrows iſſued by a juſtice of the peace, ſheriff, or other conſervator of the peace, and by the court of ſeſſion. Thoſe inferior judges always require an oath, previous to iſſuing the letters of law-borrows, much in the ſame manner as in the granting of a peace warrant in *England*. But the lords of ſeſſion in their court iſſue letters of law-borrows on petition of the complainant, requiring the ſheriff, or other officer firſt to take the complainant's oath, and then to execute the letter according to the form preſcribed.

The letters of law-borrows iſſued by the juſtices, or ſheriff, require the officer who is to execute the ſame, to apprehend and impriſon the party complained againſt, until he find caution in the ſum ſpecified in the ſaid letters; ſuperſeding execution nevertheleſs for ſuch time as the ſheriff or juſtice thinks proper, after intimation made to him to find ſuch caution. The court of ſeſſion, in their proceſs, order the perſon, in defect of finding caution, to be denounced rebel and put to the horn; which being done, and certified to the court, then they iſſue letters of caption to apprehend and impriſon him until he find caution.

If the party complained of commits any violence upon the complainer, his wife, children, or ſervants, in breach of the ſame; he hath an action of *contravention*, with concourſe of the crown, for one half of the penalties contained in the ſaid letters of law-borrows; the other belonging to the king, on account of breach of the peace. And this action may be brought either on the charge upon the letters of law-borrows, when no caution is found; or upon the bond granted for obedience thereof, when caution is found. *Id.* Sect. 77. *Stair.* B. 4. Tit. 48. Sect. 5.

And there are ſome circumſtances in this matter of law-borrows, which may explain perhaps in ſome particulars our *Engliſh* law concerning the peace. In all our old books before

before, and during, the reign of King *James* the firſt, the form of the peace warrant purporteth, that if the party charged ſhall refuſe to come before the juſtice, or to find ſufficient ſurety; the conſtable, without expecting any further or other warrant, ſhall cauſe him to be conveyed to priſon. In which reſpect the conſtable is made judge of the ſufficiency of the ſureties. But this (according to the form of the letters of law borrows) ſeemeth originally to have been, where the juſtice in the warrant did limit and ſpecify the ſum, and allow to the party a reaſonable time to find his ſureties. In which time, if he ſhould not go before the juſtice with his ſureties, then it might be reaſonable for the conſtable to carry him to gaol by virtue of the firſt warrant.

In the old precedents likewiſe, and alſo in the commiſſion of the peace, the requiring of ſureties is limited to two particulars, namely, the fear of bodily hurt to the perſon complaining, or of the burning of his houſes. But Mr. *Dalton*, who lived in time of King *James* the firſt, intimates his opinion, that if a man be threatened to have his *goods* burned he may demand ſuch ſurety: And he ſeeth no cauſe (he ſays) but that a man may crave ſurety of the peace in behalf of his wife or *ſervant* being threatened. The latitude of which opinion perhaps he might have received, from the like inſtitution under that ſame king in his ſeventh parliament of *Scotland*; by which it is required (as is above ſet forth, and the letters of law-borrows import the ſame), that the party ſhall find ſureties that the complainant, his wife, bairns, family, ſervants, and dependents, ſhall be harmleſs and ſkaithleſs kept in their perſons, lands, heretages, goods and gear, good name and reputation, by and thro' the perſon complained of, his wife, family, ſervants and dependents, or otherwiſe of their cauſing, ſend ng, hounding-out, command, reſett, aſſiſtance, or ratihabition, or whom they may ſtop or lett, directly or indirectly, in all time coming, otherwiſe than by order of law and juſtice.

The application, by the law of *Scotland*, of one half of the forfeiture, upon breach of the ſecurity, to the party grieved is undoubtedly preferable to our *Engliſh* law in that reſpect, which gives the whole to the king; which can be no compenſation for the loſs ſuſtained by the party complaining.—And this conſideration may be extended to the forfeiture of recognizances in almoſt all other inſtances.

Thus the matters ſtood in *Scotland*, upon the foundation of letters of law-borrows only, until the time of the union of the two crowns under one ſovereign in the perſon of the

ſaid *James*, who was the ſixth of that name of *Scotland*, and the firſt of *England*.

But, long before this time, in *England*, (*viz.* at the beginning of the reign of king *Edward* the third), to the aforeſaid *conſervators* of the peace, were added others by the appointment and nomination of the crown who were ſtiled *juſtices to keep the peace*. And to their office of keeping the peace, in a few years afterwards was added another and more important office, namely, that of hearing and determining offences; which is that which they enjoy under the ſecond aſſignment in the commiſſion of the peace. And in the ſame commiſſion, from time to time, the execution of ſeveral ſtatutes or acts of parliament by name was committed to them. Afterwards, in the reign of queen *Elizabeth*, a more general power was given to them, over ſeveral offences mentioned in the commiſſion, without referring to the particular ſtatutes. And ſo it continues to this day. And in every ſeſſion of parliament more and more matters and cauſes are brought under the cognizance of theſe juſtices.

When king *James* the ſixth of *Scotland* as aforeſaid came to the crown of *England*, he found this office in exerciſe here, expreſſed much ſatisfaction therein, and was anxious to introduce the ſame into his kingdom of *Scotland*. And in conſequence thereof, an act was paſſed in his 20th parliament of *Scotland*, *Stat.* 7. Intitled, "An act anent the commiſſioners and juſtice of the peace;" which, in the uſual ſtile of adulation to that prince, which occurs in the acts of the parliaments of both kingdoms, enacteth as follows: Foraſmuch as, among the infinite monuments and teſtimonies of his majeſty's true piety, ſingular wiſdom, ſincere zeal to juſtice, and fatherly care of his people, the eſtates of this kingdom have not found any bringing more deſerved commendation and permanent renown to his majeſty, or greater profit, quietneſs, and comfort to his ſubjects, than his conſtant perſeverance in his moſt religious and prudent reſolution to extirpate the ungodly, barbarous and brutal cuſtom of deadly feuds; which, by the inveterate abuſe of many by paſt ages, was become ſo frequent in this realm, as that the ſubjects of greateſt rank and quality, upon every naughty occaſion of baſe and unworthy controverſies of neighbourhood, for turves, fold-dykes, furres or marches of lands, fooliſh words or drunken diſcords between their meaneſt ſervants and dependents and any other in the country, did ſo readily embrace the protection of their unjuſt and unneceſſary quarrels, as did

many times involve themſelves and their whole friendſhip in moſt bloody and mortal troubles: And the corruption was ſo univerſal, that the greateſt part prevailing againſt the beſt, that cruel barbarity hath had both continuance and daily increaſe; until his majeſty, bending the excellent wiſdom and rare graces of his royal mind (wherewith God has endowed him more abundantly than any king that ever did reign in this iſland) againſt that godleſs, unnatural, and beſtial cuſtom, did deviſe and eſtabliſh a moſt godly, juſt and prudent law and ordinance for the courſe to be obſerved, for removing upon equitable and juſt conditions the deadly feuds aforeſaid. [Then, after ſetting forth the benefits which had accrued from that law againſt deadly feuds, the act proceeds.] And further to prevent the reviving of the ſaid feuds, his majeſty and eſtates aforeſaid do ſtatute and ordain, that in every ſhire within this kingdom, there ſhall be yearly appointed by his majeſty, ſome godly, wiſe and virtuous gentlemen, of good quality, moyen, and report, making reſidence within the ſame, in ſuch number as the bounds of the ſhire ſhall require, to be commiſſioners for keeping his majeſty's peace; to whom his majeſty with advice of the lords of his privy counſel, ſhall give power and commiſſion, to overſee, try, and prevent all ſuch occaſions as may breed trouble and violence amongſt his majeſty's ſubjects, or forcible contempt of his majeſty's authority and breach of his peace. And to command all perſons in whom they ſhall ſee manifeſt intention to make trouble or diſorder, either by gathering together of idle and diſorderly perſons, or by publick bearing or wearing of piſtolets or other forbidden weapons, and ſuch other riotous and ſwaggering behaviour; to bind themſelves, and find caution, under competent pains, to obſerve his majeſty's peace, and for their compearance before his majeſty's juſtice or lords of his privy council, to underly ſuch order as ſhall be found convenient for puniſhing their tranſgreſſions, or ſtaying of troubles and enormities. And if need ſhall be, to require the dutiful and obedient ſubjects of the ſhire, to concur with them in preventing all ſuch contempts and violences, or for taking or warding of the wilful and diſobedient authors, committers, and foſterers of theſe crimes and diſorders, under ſuch competent arbitrary pains, as his majeſty and lords of his privy council ſhall appoint for the offenders.

And unto ſuch commiſſioners appointed as aforeſaid, the king gave ſpecial inſtructions for the regulation of their conduct: Which inſtructions, in another act, in the twenty

ſecond parliament of that ſame king, *Stat.* 8. intitled, "Anent the juſtices for keeping of the king's majeſty's peace, and their conſtables," are ſet forth particularly, and enacted to be in force by authority of parliament. Which, with ſome ſmall alterations made by ſubſequent ſtatutes, are as follows:

I.

The commiſſioners and juſtices of peace, at their firſt admitting upon the bench, ſhall take the oath following, *viz.* I, as one of the commiſſioners and juſtices of peace within the ſhire of —— according to my knowledge, wit, and power, ſhall do equal right both to rich and poor, conform to the laws, ſtatutes, and cuſtoms of the land; and that I ſhall not be of counſel with any perſon in any quarrel or matter depending before me; and that I ſhall every quarter keep the ſeſſions, or oftner as I ſhall be required, not having any juſt impediment in the contrair; and ſhall faithfully and truly diſcharge my duty as a juſtice of his majeſty's peace, and ſhall leave nothing undone that may tend to the preſervation of the ſame: So help me God.

II.

Any one juſtice ſhall have power, upon complaint of any perſon being threatned and fearing to be wronged, to bind the party complained upon, under ſuch a pecunial ſum, to keep the peace, as he ſhall think fitting; as alſo to commit him until ſurety be found by him: the ſaid complainer always giving his oath before the juſtice, that he hath juſt cauſe to dread him harm. And albeit no perſon complain, yet if the juſtice be credibly informed of appearance of trouble betwixt any parties, he ſhall bind them to the peace in manner aforefaid; except the parties declare upon their conſciences, that neither of them bear any grudge to other. And all ſuch bonds ſhall be kept and recorded by him; and he ſhall make delivery of the ſame, to the clerk of the peace at the next ſeſſions, to be kept and regiſtrate by him.

III.

If any perſon, being charged to make his appearrance before a juſtice of peace, ſhall refuſe or delay, without cauſe; if the party be a landed gentleman, whoſe rents exceed ten chalders of victual, or 1000 merks of ſilver,

then

then the juſtice (whoſe command is contemned) ſhall inform the ſame to ſome of his majeſty's privy council, to the effect the party of the quality foreſaid may be called and fined for his diſobedience: And if the diſobeyer be of a meaner degree, the juſtice of peace ſhall hereby have power to command the next conſtable, or in abſence of a conſtable, his own ſervant, or any other perſon having a warrant in writing ſubſcribed by the ſaid juſtice of peace, with aſſiſtance of the country, to bring any ſuch party before him.

IV.

If either the ſheriff or baily ſhall ſhall condemn any perſon in blood-wyt; or otherways convict him in any pain proper for him to impoſe; the juſtices ſhall have no power of new to fine that offender for that offence. But if they ſhall find him not condignly puniſhed, in regard of the offence committed by him; they ſhall then inform his majeſty's council thereof, that they may take order therewith. And if there be no ſatisfaction made by the ſheriff or baily to the party offended, the juſtices may modify a reaſonable ſatisfaction to the party offended, he purſuing therefore before them: and if they find the ſatisfaction decerned by the ſheriff or baily, in favour of the ſaid party offended, not condign, nor anſwerable to the offence and wrong ſuſtained; then they ſhall alſo inform his majeſty's council thereof, that they may take order therewith as appertaineth. And if either ſheriff or bailey or their deputes by colluſion with the delinquent, ſhall ſuffer any perſon guilty to be quitted or cleared by an aſſize; the party once cleared is not to be brought further in queſtion before the juſtices; but, upon their information, the judges are to be called, cenſured, and ſeverely puniſhed, by his majeſty's council.

V.

The ſaid juſtices ſhall hereby have power to proceed upon all perſons committing riots, and breaking the king's peace, under the degree of noblemen, prelates, counſellors, and ſenators of the college of juſtice; and to puniſh and fine, according to the quality of the crime, and the eſtate of the offender. And if any of the ſaid perſons, being charged to compear before the ſaid juſtices, ſhall diſobey, (the ſummons being indorſed, the lawful citation verified, and fact proven); the juſtices ſhall puniſh and fine according to the

quality of the crime and eſtate of the offender. And for the more clear determination of the order which ſhall be kept by the ſaid commiſſioners, in the deducing of any ſuch proceſs; our ſovereign lord, with advice of his eſtates, declareth, that it ſhall be lawful to the ſaid juſtices, whenſoever they have occaſion to move any action againſt parties, for committing any like fact or riot, to refer the firſt ſummons to the parties oaths of verity, failing of other lawful probation; who being perſonally ſummoned by that firſt citation, ſhall be holden as confeſſed, and decreet to be pronounced againſt him, conform to the libel and ſummons. And if he be not perſonally ſummoned by the firſt citation, the ſaid commiſſioners ſhall be holden to cauſe ſummon him of new again, by a ſecond ſummons at his dwelling place. Which two citations ſhall be as ſufficient to infer decreet and ſentence upon the libel againſt him, as if he were apprehended perſonally. And which ſentence given after the manner and form of probation above-written, his majeſty with advice aforeſaid, authorizes and ſuſtains, as good and lawful in themſelves. And as concerning thoſe perſons of higher degree, the ſaid commiſſioners ſhall uſe all their power for preventing and ſtaying of the riots, commanding the attempters in his majeſty's name to ceaſe, and to find caution for keeping of the peace, and for their compearance before his majeſty's council. And if any perſon being charged to find caution, and refuſe it, or delay to do the ſame, and in the mean time contraveeneth the ſaid charge, by commiting of ſome deed betwixt the time of the charge and finding of the caution; nevertheleſs he ſhall be anſwerable for the pain, from the date of the charge, like as if caution had been then found.

VI.

The ſaid commiſſioners ſhall put his majeſty's act of parliament in due and full execution againſt wilful beggars and vagabonds, ſolitary and idle men and women without calling or trade, lurking in alehouſes, tied to no certain ſervices, repute and holden as vagabonds; and againſt thoſe perſons who are commonly called *Egyptians*: And they ſhall puniſh and fine the reſetters, and ſetters of houſes to them accordingly; by ſuch competent pain as is proper for them to injoin.

VII.

The ſaid commiſſioners and juſtices of peace are here-

by

by authorized and impowered, to give order (as they ſhall think moſt convenient, and with leaſt grief to the ſubjects) for mending all highways and paſſages, to or from any mercat town or ſea port within that ſhire; and ſhall call before them all ſuch perſons, as ſhall ſtrait theſe paſſages; or otherways by caſting of ditches or fulſies through the ſame, ſhall make theſe highways noiſome and troubleſome unto paſſengers; and ſhall puniſh and fine them, according to the quality of their offence. And to the effect it may be known of what breadth all common highways ſhould be to mercat-towns; our ſovereign lord, with advice aforeſaid, declareth, that the ſame ſhould be of twenty foot of meaſure in breadth at the leaſt; and where any are of larger breadth, they ordain the ſame ſo to remain unaltered or ſtraitned; and that the ſaid juſtices maintain the ſame, with all other ways from any town in the pariſh to the pariſh churches in the eſtate as they are. And where they find any neceſſity of other ways from any town in the pariſh to pariſh churches; they ſhall inform his majeſty's ſecret council thereof: who ſhall give them (after ſufficient information) their direction thereanent; according whereunto, they ſhall be holden to proceed. And if any perſon refuſe to concur for mending of highways and paſſages; the ſaid juſtices ſhall have power to cenſure and puniſh them, according to their diſcretion: with proviſion always, that if in their proceedings herein they uſe ſuch ſeverity or rigour, as may move juſt complaints againſt them; they ſhall be cenſured therefore by his majeſty's ſecret council as appertaineth.

VIII.

The ſaid juſtices ſhall put his majeſty's acts of parliament to execution, againſt cutters and deſtroyers of planting green wood, orchards, gardens, haynings; breakers of dove houſes and Cunninghares; ſtealers of bees and bee-hives; uſers of unlawful games with ſetting dogs; ſlayers of red and black fiſhes and ſmolts in forbidden time; fowlers fowling in other mens lands; makers of muirburn and moſsburn; ſetters of crooes and nets in waters and dams; having and keeping of crooes and yairs in forbidden time; and ſhall proceed againſt them accordingly. And for their better warrant to proceed in the premiſes, it is his highneſs's pleaſure, that commiſſions be granted to the ſaid juſtices of peace, to try and puniſh the violators of the ſaid acts; in the trial whereof, they ſhall proceed by witneſſes, or by oath of party; and the puniſhment to be inflicted by them, ſhall be a pecunial ſum, anſwerable to the circumſtance of

the offence, and quality of the offenders: with ſpecial proviſion, that their cenſures and puniſhments ſhall extend againſt none, but thoſe againſt whom by privilege of their inſtructions they may lawfully proceed; and alſo with proviſion, that the ſaid commiſſions be not extended to any perſons, who ſhall be arreſted and conveened for the ſaid crimes, before any other ordinary judge. It is alſo provided, that the ordnance and power contained in this article, ſhall no ways be prejudicial to any other commiſſions or rights whatſoever granted to other parties, whereby they have power to proceed and cenſure the crimes and offences abovewritten.

IX.

Item, They ſhall inform the king's majeſty's council, and his highneſs's treaſurer, or advocate, at the leaſt once every year, of foreſtallers and regraters of mercats; that order may be taken with them, conform to the acts of parliament.

X.

It ſhall not be leaſome to any hoſtlar, to reſet any maſterleſs men and rebels at the horn, any vagabonds, or other perſons guilty of known crimes, or uſing ſtouth and reif; under the pains underwritten: To wit, 40*s.* to be incurred by them for the firſt fault, 4 *l.* for the ſecond, and 10 marks for the third; together with the loſing the liberty of brewing. The incurrers of which pains ſhall be puniſhed according to the order aforeſaid, by the barons and maſters of the ground whereupon the hoſtlar dwelleth, within the ſpace of 15 days after the committing of the fact. And if the ſaid barons and heritors neglect to do the ſame within the ſaid ſpace; it ſhall be lawful to the ſaid juſtices, to purſue and fine the delinquents in their courts, according to the pains aforeſaid, and to uplift the ſame from them; without prejudice always of whatſoever acts made againſt the ſaid hoſtlars in baron court books under whom they dwell, bearing any higher pain than is ſet down in this abovewritten act; and alſo without prejudice of all action, criminal or civil, competent of the law, againſt the ſaid hoſtlars, in caſe they be under the danger thereof; which ſhall not be taken away by any puniſhment ſet down and to be inflicted conform to this act.

XI.

XI.

Item, they ſhall inform the king's treaſurer and advocate of breakers and contraveeners of the acts of parliament made againſt malt makers; that the tranſgreſſors and contraveeners thereof may be puniſhed, conform to the tenor of the ſaid acts.

XII.

They ſhall ſet down order in the country, for governance in time of Plague; and ſhall puniſh ſeverely the diſobeyers of the order appointed by them, according to the quality of the delinquent.

XIII.

They ſhall appoint at the quarter ſeſſions to be kept in *Auguſt* and *February*, the ordinary hire and wages of labourers, workmen, and ſervants; and who ſhall refuſe to ſerve upon the price ſet down by them, ſhall be impriſoned, and further puniſhed at their diſcretion. And to the effect ſervants may be the more willing to obey the ordinances to be made by the ſaid juſtices, for the ſaid fees; the ſaid juſtices ſhall have power to decern, and compel the maſter to make payment of the fees appointed by their ordinance, in caſe the ſervants pleaſe rather to purſue for the ſame before them than any other judge.

XIV.

The ſaid juſtices ſhall take notice in all ſheriffdoms, where there are any gaols and priſon houſes, within any burgh; that the ſame may be kept up, and not ſuffered to decay or become ruinous: And if there be any ſhire, where there is not any goal or priſon houſe; they ſhall inform his majeſty's council thereof, that they may appoint and give order for building of one within the head burgh of the ſhire; and according to the directions to be given thereanent, the juſtices ſhall be holden to proceed.

XV.

And becauſe there may be a great many of priſoners apprehended and committed, who having no means of their own

own for their maintenance and entertainment, will otherwiſe famiſh and ſtarve before they can come to their trial, who nevertheleſs in regard of their crimes committed can no ways be put under ſurety, or otherwiſe in faults of leſs conſequence are unable to find ſufficient caution to be made forthcoming and anſwerable at the next ſeſſion; therefore it ſhall be lawful to the ſaid commiſſioners and juſtices at their quarter ſeſſion, to rate every pariſh for a weekly proportion, for the entertainment of thoſe poor priſoners; provided they do not exceed the ſum of 5 *s.* *Scots* money at the moſt, nor under 1 *s.* at the leaſt. Which ſum ſhall be uplifted for that uſe, by the miniſter or reader who ſhall ſerve at every pariſh, from ſuch deacons who ſhall be appointed to collect the ſame. And the ſaid ſums to be delivered by the conſtable of the pariſh, at the quarter ſeſſions, in preſence of the whole bench there conveened, to ſuch perſons as the ſaid juſtices ſhall truſt therewith; and who, accordingly, ſhall make due account in paying the gaolers ſuch rates as ſhall be allowed for the poor priſoners, and making the reſt forthcoming for ſuch uſe and intent of the like nature, as the ſaid juſtices ſhall appoint.

XVI.

All magiſtrates of burghs, and keepers of any goals or priſons, ſhall receive into their priſons, all ſuch perſons as either ſhall be brought by conſtables, or ſent unto them by warrants under the hand of any one juſtice of peace; the ſaid juſtices cauſing ſatisfie for their entertainment. And if any magiſtrates, or their gaolers, ſuffer any perſons, committed by the juſtices to their priſons, to eſcape; they ſhall be condignly puniſhed therefore, at the diſcretion of his majeſty's council.

XVII.

Item, our ſovereign lord, with advice aforeſaid, ordains the ſaid commiſſioners to ſet a price upon craftſmens work, and upon the ordinars of penny-bridals; together with the price of ſhearers fees; and to puniſh the contraveeners, as appertaineth.

XVIII.

They ſhall cauſe ſufficient ſingle and double ale to be brewed in every ſhire; and ſhall appoint viſitors to that effect

effect, with consent of the baron and our lord of the ground; They shall set down acts against notorious and common drunkards, and impose sums upon the contraveeners, according to their qualities and deserts.

XIX.

Our sovereign lord, with advice aforesaid, declareth, that three justices of peace shall be a full number and session; to decide in matters occurring betwixt the four quarter sessions.

XX.

Also declares, that no letter of caption ought to be granted against the said justices, for apprehending of rebels; except they be found subject to do the same, by possessing of such other offices and places, to which the obedience and putting to execution of any such charges doth belong.

XXI.

There shall be but one Weight and measure throughout the kingdom: And the justices aforesaid, shall confer the same with the standard; and where they find a disconformity, they shall inform the king's majesty's council thereof, that they may take order therewith as appertaineth.

XXII.

The said justices shall be holden to give command and direction to their constables, to apprehend any such person, who shall be found contemptuously to have disobeyed the censures of the church, they being lawfully required to do the same.

XXIII.

The said justices of peace, as well to burgh as land, shall convene and be present at the quarter sessions of the shire where the burgh and land lieth; give their oath to the bench at their admission; make their record; and make payment of the fines intrometted with by them, as justices of peace of that shire, to their collector.

XXIV.

XXIV.

They ſhall appoint a ſufficient collector, for uplifting the fines and penalties, which they have power to impoſe upon an offender; and are to take caution of him for making due account.

XXV.

They ſhall have, during the time of ſeſſions, for every day of their abode (ſo it do not exceed the number of three days at the moſt at one time) allowed to every one of them 40 *s.* *Scots* money, daily to be paid and uplifted by the collector of the fines. But neither earl, lord, biſhop, privy counſellor, or ſeſſioner, ſhall have any allowance. And all ſuch juſtices as have the benefit of that allowance and ſhall be abſent from every ordinary quarter ſeſſions, or otherwiſe when he is required lawfully by the cuſtos rotulorum to any particular meeting, ſhall incur the penalty of 40 *l.* *Scots* money, not being lawfully excuſed, and the excuſe allowed by the reſt of the juſtices there aſſembled.

XXVI.

The lords of ſeſſion ſhall direct general and ſummar charges of horning and poynding, at the inſtance of the collector appointed in every county, for ingathering all fines and penalties whatſoever incurred, upon a ſimple charge of of 15 days; and no ſuſpenſion ſhall be granted thereof, but upon conſignation of the ſums contained in the ſentences, and by finding caution for payment of the charges at the modification of the ſaid lords.

XXVII.

The ſaid commiſſioners, at the end of every quarter ſeſſions, ſhall ſend to his majeſty's council, a catalogue of all ſuch perſons as they have either committed, or otherways put under ſurety, with a ſhort abbreviate of the cauſe thereof; to the effect, that thereupon the council, as they ſhall think expedient, may return to them againſt their next ſeſſions, or to the *cuſtos rotulorum* in the mean time, their further directions.

Unto

Unto theſe were added, by the ſtatute of *Charles* the ſecond, (hereafter mentioned) theſe following particulars:

XXVIII.

The juſtices, at their firſt ſitting, together with the oath of juſtice, ſhall take the following oath of allegiance:

I, for teſtification of my faithful obedience to my moſt gracious and redoubted ſovereign, *Charles*, king of *Great Britain*, *France*, and *Ireland*, defender of the faith, &c. affirm, teſtify, and declare, by this my ſolemn oath, that I acknowledge my ſaid ſovereign only ſupreme governor of this kingdom, over all perſons, and in all cauſes; and that no foreign prince, power, or ſtate, nor perſon, civil or eccleſiaſtick, hath any juriſdiction, power, or ſuperiority over the ſame: And therefore I do utterly renounce and forſake all foreign juriſdictions, powers, and authorities; and ſhall, at my utmoſt power, defend, aſſiſt, and maintain his majeſty's juriſdiction aforeſaid, againſt all deadly; and ſhall never decline his majeſty's power nor juriſdiction; as I ſhall anſwer to God.

XXIX.

The juſtices of peace, in every reſpective ſhire, ſhall meet and conveen together, four times in the year; *viz.* on the firſt *Tueſday* of *May*, the firſt *Tueſday* of *Auguſt*, the laſt *Tueſday* of *October*, and the laſt *Tueſday* of *March*. In which ſeſſions, they ſhall adminiſter juſtice to the people, in things that are within their juriſdiction; and puniſh the guilty for faults and crimes done and committed in the preceeding quarter: and by mutual and conjunct advice, make and rectify ordinances for the fees of ſervants, ſhearers, in harveſt, and other labouring men; appoint prices for all handycrafts; elect or continue conſtables or other officers; and diſpoſe of the fines and mulcts, for payment of the conſtables, clerks, and other officers fees, and employ the remanent on ſuch neceſſary and pious uſes, as they ſhall find moſt expedient; and ſhall have power to continue the ſaid ſeſſions, or to adjourn the ſame, to ſuch days and places as ſhall be moſt convenient.

XXX.

The ſaid juſtices ſhall put in execution, all acts of parliament made for puniſhing all perſons whatſoever, who ſhall curſe

curſe or profanely ſwear, or ſhall be mockers or reproachers of piety, or the exerciſe thereof; and ſhall require and levy upon every offender the ſeveral penalties following: *viz.* of a nobleman 20 *l.*: each baron 20 merks; each gentleman, heritor, or burgeſs 10 merks; each yeoman 40 *s.*; each ſervant 20 *s.* *Scots* money; each miniſter in the fifth part of his year's ſtipend, without prejudice to other proceedings againſt any ſuch miniſter for the ſame. And in any of all the caſes before ſpecified in this inſtruction, the ſaid juſtices ſhall put in execution all ſuch laws as for corporal puniſhments, as have any proviſions mentioned in them for ſuch caſes. And in caſe of the inabilities of the parties delinquents to pay the forementioned in this inſtruction; the ſaid juſtices ſhall put in execution, ſuch laws as for corporal puniſhments, as have any proviſion mentioned in them for ſuch caſes. And that the wives delinquents ſhall be puniſhed according to the quality of their reſpective huſbands; and that their huſbands be liable for the payment of their wives fines reſpectively, in manner abovementioned, *toties quoties* for each fault. And all others whatſoever, not particularly herein nominate, are to pay in proportion to their reſpective qualities and degrees. All and ſundry which penalties ſo to be levied, are to be diſpoſed of as followeth: *viz.* one half to pious uſes, in the ſame pariſh where the offenders live, or the offence hath been committed; and the other half to be divided in two equal parts, one part whereof to be given to the informer and proſecutor, and out of the other half to ſatisfy the conſtable or other perſons who ſhall be employed for bringing the perſons accuſed to juſtice, and the remainder to be diſpoſed of to pious uſes, or to ſatisfy the conſtables for their travel and ſervice in other parts of their office, according as the juſtices ſhall think fit.

XXXI.

The ſaid juſtices are to put in execution, the acts of parliament made for the puniſhing of all perſons that ſhall be found guilty of the ſin of fornication; and that they levy, or cauſe to be levied, the ſeveral pecunial ſums therein mentioned; *viz.* for each nobleman, for the firſt fault 400 *l.* each baron 200 *l.* each other gentleman, and burgeſs, 100 *l.* every other perſon of inferior quality 10 *l.* *Scots* money; and that theſe penalties ſhall be doubled *toties quoties*, according to the relapſes and degrees of the offence, and quality of the offenders. And that the ſaid penalties ſhall be levied, not only of the man, but of the woman, according

cording to her quality, and the degree of her offence, the one without prejudice of the other. The ſaid penalties to be levied and diſpoſed, in like manner as for curſing, ſwearing, and profaneneſs, as is above mentioned.

XXXII.

That the juſtices ſhall put the acts of parliament in execution, for the puniſhing of all perſons found guilty of the ſin of drunkenneſs or exceſſive drinking, eſpecially under the names of healths; or haunting taverns or alehouſes after ten of the clock at night, or at any time of the day, except in time of travel, or for ordinary refreſhments: As alſo againſt the keepers of the taverns or alehouſes, that ſhall ſell the drink unto them. Which penalties in the ſaid ſeveral acts contained, the ſaid juſtices are to levy or cauſe to be levied upon the ſaid delinquents; and the ſaid penalties are to be diſpoſed of by the ſaid juſtices, in like manner as aforeſaid.

XXXIII.

The ſaid juſtices ſhall put in execution, all acts of parliament made againſt ſuch perſons as ſhall profane the Lord's Day; and require or levy the penalties therein contained: which penalties aforeſaid the ſaid juſtices are to diſpoſe of in like manner as aforeſaid.

XXXIV.

And at what time and whenſoever one ſhall accuſe another perſon or perſons, to be guilty of treaſon, murder, or other felony, blaſphemy, inceſt, or any other heinous crimes; in ſuch caſes, the ſaid juſtice or juſtices ſhall forthwith cauſe ſuch perſon or perſons to be apprehended; and after inquiry made in the cauſe, the ſaid juſtice or juſtices, if they find cauſe, ſhall commit the offender to priſon, or take ſufficient bail, if the caſe by the law be bailable; and ſhall take the information of the party accuſing upon oath, and bind him to proſecute; and ſhall take the teſtimony or depoſition of the witneſſes likewiſe upon oath, and bind them to give an evidence; and ſhall alſo take the examination of the party accuſed. All which recognizances, informations, depoſitions, and examinations, the ſaid juſtice or juſtices ſhall certify to the next quarter ſeſſion, aſſizes, or criminal courts reſpectively; to the

the end that juſtice may proceed againſt them according to the law.

XXXV.

And if any nobleman, baron, or baily, or any in their names, having power, ſhall acclaim the right of juriſdiction, to proceed againſt any delinquent apprehended by a conſtable for any capital crime; then, and in that caſe, any of the juſtices ſhall receive ſecurity of the ſaid party who required the defender to be delivered to him, that juſtice ſhall be duly miniſtered; and then ſhall cauſe delivery of the ſaid perſon to be made to him: And the ſaid juſtice of peace, at the next ſeſſion, ſhall certify the whole matter to the bench; to the effect they may inquire, whether juſtice hath been accordingly miniſtred, and if any fault be found, to adverti ſe his majeſty's council, that order may be taken therewith.

XXXVI.

The ſaid juſtices ſhall, twice in the year, at the firſt of *December* and the firſt of *June*, take up a liſt of the poor in every pariſh, within burgh, or land. Into which number there ſhall no perſons be received, who are any way able to gain their own living. And to the effect theſe poor may no longer be neceſſitated to ſeek their living, with ſuch hardſhip and difficulty, by ſcandalous vaguing as hitherto they have been in uſe of; the juſtices ſhall appoint two or more perſons of good fame and quality in every pariſh to be overſeers of the poor in each pariſh aforeſaid; and to authoriſe the ſaid overſeers to make due trial and examination of the condition and number of ſuch poor, aged, ſick, lame, and impotent inhabitants of the ſaid pariſh, who (of themſelves) have not to maintain them, nor are able to work for their living; as alſo of all orphans and other poor children within the ſaid pariſh, who are left deſtitute of all help. And the ſaid overſeers are to inliſt and inroll all ſuch perſons, and to provide them ſuch a convenient houſe for their dwelling, either apart or together, as they ſhall judge requiſite. And upon conſideration had, what the neceſſary maintenance will extend to weekly; the ſaid overſeers are to call for the collections of the ſaid pariſh, or other ſums appointed for the maintenance of the poor thereof: And the perſons who have the ſaid ſums in their hands, are hereby required to deliver the ſame to the ſaid overſeers; and their receipts under their hands ſhall be their ſufficient diſcharge.

Which

Which ſum ſo received, the overſeers are to diſpoſe proportionably to the ſeveral poor people aforeſaid, according as they ſhall find their neceſſities to require. And the ſaid overſeers are to take due trial of the good behaviour and carriage of the poor perſons liſted and inrolled as aforeſaid; that if any of them, being ſo provided, ſhall go abroad to beg, or otherways miſcarry themſelves, or ſhall refuſe (being able) to work any manner of work that they are able to perform, in ſuch caſes the ſaid overſeers are to acquaint the ſaid juſtices therewith; who ſhall appoint ſuch puniſhments for the firſt fault, as in their judgments they ſhall find requiſite; and if they ſhall continue in ſuch miſcarriages, they are to be holden and reputed as vagabonds, and ſo to be proceeded againſt according to the law in that caſe provided. And to the end that there may be an exact performance of the premiſſes; the ſaid juſtices are hereby required, to call before them the ſaid overſeers once in every ſix months, or oftner if they ſhall think expedient, to give an account upon oath of the whole ſums received by them, and to produce the rolls of the ſaid poor, together with an account of what money they have received any otherways for the uſe of the ſaid poor; and after due conſideration of the charge, together with the diſcharge thereof, to approve, allow, or diſallow the ſame, as ſhall be found juſt; and the ſaid juſtices are to take due trial and examination, how the ſaid overſeers have diſcharged their truſt. And in caſe of the refuſal of any of the ſaid overſeers, nominate and elected as aforeſaid, to accept the ſaid office; or, having accepted, ſhall be found negligent therein; or ſhall refuſe or delay to give an account of their intromiſſions, when required as aforeſaid; or to deliver what money ſhall be found reſting in their hands, undiſpoſed of, at the end of the year, unto ſuch new overſeers as ſhall be appointed; in ſuch caſes, the offenders ſhall incur the penalty of 20 *l. Scots*, to the uſe of the poor; and ſuffer ſuch further cenſure, as the ſaid juſtices, at their quarter ſeſſions, upon conſideration had of their fault, ſhall ſee meet to impoſe.

Next follow the inſtructions, anent Conſtables.

I.

Our ſovereign lord, with advice of his eſtates, finds and declares that the conſtables are to be made *choice* of, by the commiſſioners and juſtices of peace, in their quarter-ſeſſions throughout the whole country, two at leaſt in every pariſh,

or more, according to their diſcretion, having conſideration of the quality thereof: In great towns likewiſe, not being cities not free burghs, they are to appoint a number of conſtables proportionably to the greatneſs thereof. But in all burghs regal, and free cities, the conſtables are to be choſen by the magiſtrates of the ſame. And they are to endure and to be changed from ſix to ſix months. And who ſhall refuſe to accept the charge, and not to give his oath for dutiful execution thereof, ſhall be impriſoned, and fined at the at the diſcretion of the juſtices of peace at their next ſitting.

II.

Followeth the *oath* to be taken by the conſtables:

I do ſwear, that I ſhall faithfully and truly diſcharge the office of conſtabulary, within the pariſh of —— induring the time appointed to me; and ſhall not, for favour, reſpect, or fear of any man, forbear to do what becometh me in the ſaid office: And above all things, I ſhall regard the keeping and preſerving of the king's majeſty's peace; and ſhall, at every quarter ſeſſion and meeting of juſtices, give true and due information of any breach which hath been made of his majeſty's peace, within the bounds of my commandment; and ſhall no way hide, cover, nor conceal the ſame, nor any of the proofs and evidences which I can give for the clearing and proving thereof: So help me God.

III.

All the conſtables, or at leaſt one of every pariſh intruſted with power to anſwer for the reſt within the ſaid pariſh, ſhall *attend at every quarter ſeſſion*, there to give information of all ſuch breaches of the peace and other miſdemeanors, as have happened within their bounds ſince the preceeding ſeſſions, and have come to their knowledge; and ſhall no way hide, cover, nor conceal the ſame, nor any of the proofs and evidences which they can give for the clearing and proving thereof; and otherways to give the bench further information in any thing wherein they ſhall be required; and to receive from the ſaid juſtices, at the end of the ſeſſion, ſuch order and direction, as they then ſhall injoin and appoint.

IV.

Every conſtable in their reſpective pariſhes, ſhall apprehend any ſuſpicious perſons who are *night-walkers*, and cannot give a good account of themſelves, and carry them to the next juſtices of peace, to find caution for their good behaviour, or otherwiſe be committed to priſon: And the ſaid conſtable or conſtables ſhall ſtay and arreſt all vagabonds, ſturdy beggars and *Egyptians*; and carry them before ſome juſtice of peace, who ſhall take order for their committing to priſon, or other puniſhments, according to the ſtatutes of parliament.

V.

Every conſtable in their reſpective pariſhes, ſhall arreſt all *idle perſons*, who they know to have no means to live upon, and will not betake themſelves to any labour, trade or occupation, and ſhall carry them before ſome juſtices of peace; who, after examination, ſhall either commit them to priſon, or take ſurety of them for their appearance at the next quarter ſeſſion.

All conſtables, in their reſpective pariſhes, ſhall *apprehend* every perſon or perſons, that ſhall be guilty and capable of ſlaughter, murder, theft, or any other capital crime whatſoever; and ſhall require his neighbours to aſſiſt for ſafe conveying of ſuch perſon or perſons, to the next juſtice of peace; who ſhall commit him or them, or take ſurery according to the inſtructions given to the juſtice of peace in ſuch like caſes: And if any perſon or perſons ſhall refuſe or delay to aſſiſt the ſaid conſtable or conſtables, in executing his or their offices; ſuch perſons, for refuſing or delaying, ſhall be impriſoned, or otherwiſe puniſhed by the ſaid juſtices at their ſeſſions.

VII.

All conſtables ſhall arreſt any perſons, not being in his majeſty's ſervice, who ſhall be found wearing of *hagbuts*, *guns*, or *piſtols*, in any ſort; and ſhall carry them before ſome juſtice of peace, who is either to take ſecurity for their appearance the next quarter ſeſſion, or commit them priſoners till they do the ſame; unleſs they be licenſed from the council, or ſome impowered from them to give ſuch licen-

VIII.

VIII.

If any party complain to a conſtable, that he is *threatned* by another; then ſhall the conſtable apprehend the threatner, and carry him with the party complainer before the next juſtice of peace; and if he refuſe to go, then ſhall he carry him to priſon.

IX.

Upon the appearance of any *fray* or ſtir betwixt parties; the conſtable ſhall require the aſſiſtance of his neighbours, for ſundering of the parties: And if there be any harm done to the conſtable, or any of the aſſiſtants, by them who made the fray; they ſhall be puniſhed by the juſtices at the next ſeſſion.

X.

When any perſon or perſons have made a fray, and then *flee* to an houſe; the conſtable or conſtables may follow to the houſe, [and require the maſter or keeper thereof] to open the doors; which if he or ſhe ſhall refuſe, he ſhall take notice of the maſter or keeper of the houſe, and require witneſſes thereon. And albeit the delinquent ſhall flee further, without the bounds of the conſtable's charge; yet may the conſtable follow, and apprehend him in a freſh purſuit, and crave concurrence of the country for that effect.

XI.

The conſtables in every pariſh ſhall execute all ſuch *precepts* and *warrants*, as they ſhall from time to time receive from the juſtices of peace.

XII.

And that the ſaid conſtables may have *ſatisfaction* for their travels and pains; our ſovereign lord, with advice aforeſaid, ordains the ſaid juſtices to give up particular notes in writing, to the auditors of his majeſty's exchequer, of the fines in-brought to them; that out thereof, ſuch meaſure and ſatisfaction may be appointed and given to the ſaid conſtables, and alſo to the clerks of the peace, as may recompenſe

penſe their travels. Wherein if it ſhall be found, that the ſaid fines ſhall not be ſufficient; the ſaid lords of his highneſs's chequer ſhall appoint ſuch further ſatisfaction to them, as in their diſcretion they ſhall think their labours and diligence do deſerve, and cauſe them to be paid off the ſame.

And notwithſtanding of this above written act, and all the particulars aforeſaid contained in the ſame; our ſovereign lord, with advice and conſent of his ſaid eſtates, ſtatutes, decrees, and declares, that the erection of the ſaid commiſſioners and juſtices of peace, and grant of juriſdiction and privileges to them, and the making or approbation of the particular acts above written, introduced in their favours, or any thing therein contained, ſhall not be in any ſort derogatory or prejudicial to the rights, privileges, and liberties, granted and beſtowed by his majeſty or his highneſs's royal predeceſſors heretofore, to any of his majeſty's ſubjects, of whatſoever eſtate or quality, from the higheſt to the loweſt: But declares that the ſaid rights, privileges, and liberties ſhall remain in their own integrity, ſafe, intire, unhurt, or unprejudiced by the premiſſes, or any thing expreſſed in the ſaid articles and every one of them, and are holden as eſpecially reſerved and excepted out of the ſame. And leſt this above written reſervation ſhould ſeem altogether to deſtroy the power granted to the ſaid juſtices, or ſhould beget controverſy betwixt them and any other having right and liberty of juriſdiction as ſaid is; our ſovereign lord, with advice aforeſaid, for removing of all queſtion which may ariſe betwixt them thereanent, declares, that it ſhall not be lawful nor permitted to the ſaid juſtices, to make any citation of parties before their courts, till the expiring of the ſpace of fifteen days after the committing of the fact for the which the committer is to be conveened: At the compleat out-running of which ſpace, if any having power and juriſdiction as ſaid is, hath omitted and neglected to uſe and exerce the privilege and liberty of their right and power; it ſhall then be lawful to the ſaid juſtices, to make citation, and to proceed againſt the parties, according to the power and authority given to them by his highneſs with advice aforeſaid, and conform to the particular articles above written in all points, and no otherways.

Which all and ſundry the premiſſes, our ſovereign lord, with advice and conſent aforeſaid, ratifies and approves in all points, in manner as the ſame purports; and gives unto them the ſtrength and force of acts and ordinances of parliament, and ordains execution to paſs upon the ſame as effeirs."

Several

Several of the large powers given to the juſtices, and to conſtables, in the aforeſaid inſtructions, appear to have been copied almoſt verbatim from the *Engliſh* books concerning the office of a juſtice of the peace in thoſe arbitrary times; which, tho' in *England* they would now perhaps be thought exorbitant, yet are in force (as hath been ſaid) in *Scotland* by authority of parliament. Such as, the power given to the conſtables to apprehend perſons under the looſe and indeterminate deſcription of *night walkers*, not giving a good account of themſelves; and power given to the juſtices to bind them to the *good behaviour*, previous to any trial and conviction of the offence: Power to the conſtable to arreſt *idle perſons*, having no means to live upon, and not betaking themſelves to labour; with power to the juſtices (as before) to commit or bind them over: So alſo, the power given to a conſtable, on complaint of any perſon made to him (not upon oath) that another *threatens* him, to apprehend the perſon complained of, and carry him before a juſtice; and if he refuſes to go before the juſtice, then to carry him to gaol.

But it is to be obſerved, that the aforeſaid power of appointing juſtices, which the other powers conſequent thereupon, by the ſtatute of *James* the ſixth, were only perſonal to that prince, and did not extend to his ſucceſſors.

But by an act in the firſt parliament in *Scotland* of king *Charles* the *firſt*, *Stat.* 25. the ſame were continued during that king's reign, with power to enlarge and amplify the juriſdiction; as followeth: "Our ſovereign lord and eſtates of parliament, ratify, approve, and confirm the eighth act of the 22d parliament, holden by king *James* the ſixth of eternal memory, intitled, [*Anent the juſtices for keeping of the king's peace, and their conſtables*]; in the whole heads, articles, and clauſes therein contained, admitting the generality hereof to be as valid and ſufficient, as if the ſame were all herein *per expreſſum* ingroſſed. Alſo his majeſty, and eſtates aforeſaid, give power, authority, and commiſſion to the lords of his majeſty's privy council, to inlarge and amplify the power and authority of the ſaid juſtices of peace, if they find it neceſſary and expedient; and what they ſhall decree and determine thereanent, find and declare, that the ſame ſhall have the force, ſtrength, and power of an act of parliament."

During the uſurpation of *Oliver Cromwell*, the like powers were given, with ſome few alterations; of which the moſt remarkable were, that the juſtices might compel any perſon whatſoever to come before them, and proceed againſt all

all rioters and breakers of the peace, without exception; and that their power ſhould not be ſubject to ſuſpenſion for any number of days after commiſſion of the crime by reaſon of any exempt juriſdictions. But theſe regulations expired with the authority that eſtabliſhed them.

Then came the ſtatute of *Charles* the *ſecond*, in his firſt parliament of *Scotland*, *ſtat.* 38. intitled, *Commiſſion and inſtructions to the juſtices of peace and conſtables*; by which it is enacted as followeth: "Our ſovereign lord, taking to his royal conſideration, how much the appointing of juſtices of peace and conſtables, within all the ſhires of this kingdom, under the reign of his majeſty's royal predeceſſors, did contribute to the peace, quiet and good government thereof, and to the ſpeedy and impartial execution of law and juſtice to all perſons ſubjected to their juriſdiction and power; therefore, and for the furtherance of theſe ends in the future, his majeſty, with advice and conſent of his eſtates of parliament, doth hereby ſtatute and ordain, that *in all time coming*, there ſhall be juſtices of his majeſty's peace appointed, within each ſeveral ſhire of this kingdom, to be nominated from time to time by his majeſty and his royal *ſucceſſors*: Which juſtices of peace are hereby impowered to adminiſter juſtice, and put his majeſty's laws in execution [according to the particular inſtructions therein after mentioned; which inſtructions are above ſet forth, under the ſtatute of *James* the ſixth.]"

In the reign of king *James* the *ſeventh* (who was *James* the *ſecond* of *England*), in the firſt ſeſſion of his firſt parliament of *Scotland*, an act was made (*ſtat.* 16.) ratifying the aforeſaid acts of *James* the ſixth, *Charles* the firſt, and *Charles* the ſecond; with a ſpecial additional power to the juſtices, to proceed againſt church irregularities and nonconformity. But that act (amongſt many others of that ſame king) was repealed by an act of the ſecond parliament of *William* and *Mary*.

So that the matter, until the time of the union of the two kingdoms in the reign of queen *Anne*, reſts in effect upon the aforeſaid ſtatute of *Charles* the ſecond; giving power to the king and his ſucceſſors in all time coming to iſſue commiſſions of the peace, with authority to the juſtices to exerciſe their office according to the inſtructions above ſet forth.

The act of *Union*, 5 *An. c.* 8. brought in a conſiderable adition from the laws of *England*. For by the 18th article of the union, it is ſtipulated, "That the laws concerning, regulation of *trade*, *cuſtoms*, and ſuch *exciſes* to which *Scotland* is by virtue of this treaty, to be liable, be the ſame in *Scotland*, from

from and after the union, as in *England*; and that all other laws in uſe within the kingdom of *Scotland*, do after the union, and notwithſtanding thereof, remain in the ſame force as before, (except ſuch as are contrary to, or inconſiſtent with this treaty), but alterable by the parliament of *Great Britain*; with this difference betwixt the laws concerning publick right, policy and civil government, and thoſe which concern private right, that the laws which concern publick right, policy, and civil government, may be made the ſame throughout the whole united kingdom; but that no alteration be made in laws which concern private right, except for evident utility of the ſubjects within *Scotland*."

Further, by the 6 *An. c.* 6. intitled, *An act for rendering the union of the two kingdoms more intire and compleat*, it is enacted, "That in every ſhire and ſtewartry within that part of *Great Britain* called *Scotland*, and alſo in ſuch cities, boroughs, liberties, and precincts within *Scotland* as her majeſty, her heirs or ſucceſſors ſhall think fit, there ſhall be appointed by her majeſty, her heirs or ſucceſſors, under the great ſeal of *Great Britain*, a ſufficient number of good and lawful men to be juſtices of the peace, within their reſpective ſhires, ſtewartries, cities, boroughs, liberties, or precincts; which perſons ſo appointed, over and above the ſeveral powers and authorities veſted in juſtices of the peace by the laws of *Scotland*, ſhall be further authorized to do, uſe and exerciſe, over all perſons within their ſeveral bounds, whatever doth appertain to the office and truſt of a juſtice of peace by virtue of the laws and acts of parliament made in *England* before the union, in relation to and for the preſervation of the publick peace: Provided nevertheleſs, that in the ſeſſions of the peace, the methods of trial and judgments ſhall be according to the laws and cuſtoms of *Scotland*. Provided alſo, that nothing in this act contained ſhall be conſtrued to alter or infringe any rights, liberties, or privileges, heretofore granted to the city of *Edinburgh*, or to any other royal borough, of being juſtices of peace within their reſpective bounds."

So that, as by the act of union the laws of *England* concerning *trade*, *cuſtoms*, and *exciſe* were introduced; ſo by this act, all the *Engliſh* laws, by which the juſtices have juriſdiction *in relation to and for the preſervation of the publick peace*, are enacted to be in force for the ſame purpoſe in *Scotland*.

And this extends not only to the laws for preventing the peace from being broken, as by requiring ſureties for the peace, or good behaviour, or the like; but alſo to offences actually

actually committed, ſuch as come under the denomination of *criminal*, and for which the offenders are to be proſecuted, at the ſuit of the king. For thus it is explained by the ſtatute of the 8 *An. c.* 16 for aboliſhing the method of exhibiting criminal informations by the porteous roll; reciting, "That whereas by virtue of the act of 6 *An. c.* 6. the juſtices of the peace in *Scotland* have ſufficient authority *to receive information concerning crimes committed within the reſpective counties, and to commit ſuch offenders, or take ſecurity or recognizance, and to do other neceſſary acts for the effectual proſecution of the ſaid crimes*; in conſequence whereof the old method of taking up dittay, and exhibiting informations againſt delinquents by the ſtreſs and porteous roll, as the ſame was grievous, is now become unneceſſary; it is therefore enacted, that the ſaid method of taking up dittay, and exhibiting information by the ſtreſs and porteous roll, ſhall be totally aboliſhed to all intents and purpoſes whatſoever."

And as to other matters not relating to the peace, there are acts paſſed in almoſt every ſeſſion of parliament, giving power to the juſtices in *Scotland* to proceed in the execution thereof; ſometimes ſpecially, as in acts made for *Scotland* only; or otherwiſe generally, in acts made for the whole united kingdom.

So that the juſtices in *Scotland* have all that power which they had by the laws of *Scotland* before the union; and a large additional power, from the laws of *England* before the union; and from the laws enacted by the parliament of *Great Britain*.

In order therefore to obtain an intire knowledge of the whole office of theſe juſtices in *Scotland*, the laws of both kingdoms muſt undoubtedly be taken into the account.

The laws of *Scotland*, are but few in compariſon; and generally ſuccinct and ſhort. But it is to be obſerved, that there is one thing in the *Scotch* laws, to which our laws are not ſimilar. Their ſtatutes, or acts of parliament, by nonuſe loſe their force and obligation. And this lord *Stair* reckons as a comparative excellence in their law. "Notwithſtanding, (he ſays) that their ancient common law continues unaltered by contrary uſage, yet their ſtatutes or acts of parliament are liable to deſuetude, which never incroaches on the other. And in this (ſays he) we differ from the *Engliſh*; whoſe ſtatutes of parliament, of whatſoever antiquity, remain ever in force till they be repealed; which occaſions to them many ſad debates, publick and private, upon old forgotten ſtatutes," *Stair. B.* 1. *Tit.* 1. *ſ.* 16.

And Mr. *M'Douall* ſays, "Many of our old *Scotch* ſtatutes

ſtatutes have run in deſuetude, a contrary uſage for a long courſe of time acquieſced to by the lawgivers, being a tacit abrogation of them. But if theſe laws (he adds) do concern the *publick policy of the kingdom*; a diſuſe of them paſt memory, or a contrary practice, regularly will not derogate from them: a cuſtom againſt ſuch laws will always remain erroneous, and cannot be eſtabliſhed by any length of time." *Mc Douall. B.* 1. *Tit. If.* 60.

The only difficulty therefore that remaineth with regard to the *Scotch* ſtatutes ſeemeth to be, to determine with preciſion, which of them are now in force, and which of them are abrogated by contrary uſage.

As to the laws of *England* made before the union, there ſeemeth to be no material difficulty.

With reſpect to the laws made by the parliament of *Great Britain* there ſeemeth to be ſome foundation of doubt, no rule having been hitherto eſtabliſhed whereby to aſcertain which of them extend to *Scotland*, and which do not. And in this the learned ſeem not to be altogether agreed. In ſome ſtatutes, there is a ſpecial proviſo, that the ſame ſhall not extend to that part of *Great Britain* called *Scotland:* Concerning theſe, there can be no doubt. Others import to be enacted for the kingdom of *Scotland* only: As to theſe likewiſe the caſe is very clear. There are other ſtatutes, in which there are manifeſt indications that they are intended for both kingdoms; as where it is expreſſed, *within the kingdom of Great Britain*, or ſometimes leſs explicitly, as, *within this kingdom*,—*within this realm*, —— *within his majeſty's dominions*, ——— *within this realm*, —— *within his majeſty's dominions*, and the like; and the circumſtances at the ſame time are equally applicable to both kingdoms.

On the other hand, there are acts which refer to ſome preceeding *Engliſh* act only, and they recite inconveniences not incident to the other part of a united kingdom; theſe have evident ſignatures that they are intended for *England* only.

But the queſtion is, where an act is general; as if it expreſs, that if a man ſhall commit ſuch an offence, he ſhall, upon conviction thereof before a juſtice of the peace, forfeit ſo much. The clauſe (which is not infrequent in ſtatutes) excepting *Scotland*, ſeems to imply, that if the exception had not been, the act would have extended to *Scotland*. And if ſo, far the greateſt part of the *Britiſh* ſtatutes, which give cognizance to juſtices of the peace in the reſpective caſes, extend to both kingdoms alike.

To give ſome inſtances:—There have been ſeveral acts in

in *Scotland* made with reſpect to *vagrants*, evidently framed from the like regulations made in *England*, modified only according to the different circumſtances of each kingdom. Then comes the *Britiſh* act of the 17 *G.* 2. *c.* 5. which recites, "Whereas the number of rogues, vagabonds, beggars, and other idle and diſorderly perſons, daily increaſes, to the great ſcandal, loſs, and annoyance *of the kingdom*." —— And therefore enacts ſeveral regulations to be made with regard to ſuch offenders; and repeals the whole *Engliſh* law relating to vagrants prior to the ſaid act, but ſaith nothing of the *Scotch* laws. It may ſeem from hence, that the *Scotch* vagrant acts are intended to continue in force, ſo far as they are not altered by the ſaid act; and that in other reſpects this ſame act ſhall be in force in *Scotland*; and, conſequently, in order to exhibit the whole law relating to vagrants in *Scotland*, thoſe acts of *Scotland*, and this preſent *Britiſh* act are to be taken together. And accordingly, Mr. *M'Douall* obſerves in this caſe, that the *Britiſh* act muſt be the rule, in deſcribing who ſhall be rogues, vagabonds, and ſturdy beggars, and the like; as likewiſe with reſpect to their puniſhment: but as to the legal ſettlement in a pariſh, to which the vagrants are to be ſent, in order to be corrected or maintained, it muſt be taken from the *Scotch* acts; and by the lateſt of theſe, the party's reſidence in a pariſh the laſt three years is the rule: And accordingly it was found by the Lords, in a caſe of maintenance of a poor perſon, that ſuch pariſh was bound to ſupport him. (Caſe of the town of *Dunſe*, *June* 5, 1745,) 1 *M'Douall. B.* 1. *Tit.* 2. 59 *ſ.*

The *Britiſh* act of the 12 *An. ſt.* 2. *c.* 18. concerning *ſhips* caſt on ſhore or otherwiſe in diſtreſs, refers only to two *Engliſh* acts; yet inaſmuch as the ſubject matter thereof concerns both kingdoms alike, and the directions therein require that the conſtables and others, within the ſeveral ports *within her majeſty's dominions*, ſhall take order for the preſervation of the ſhips and goods, it may ſeem to extend to the whole united kingdom.

The ſtatute of the 16 *G.* 2. *c.* 31. concerning *priſoners* attempting to eſcape; the 6 *An. c.* 31. about ſervants *firing* houſes; the ſeveral *Britiſh* acts againſt *gaming*; are expreſſed generally: Yet Mr. *M'Douall* recites them as of force in *Scotland*, *becauſe* they are general, and not limited to *England*. *B.* 1. *Tit.* 8. *ſ.* 200. *Tit.* 10. *ſ.* 73, 206—211.

The 24 *G.* 2. *c.* 44. for rendering *juſtices* more ſafe in the execution of their office, by the ſtyle thereof, is adapted to proceedings in the courts of *England*. Yet (Mr. *M'*

Douall obſerves) from the ſpirit and indentment of it, that it may juſtly be thought, it ought to take place alſo in *Scotland*, ſince (as he adds) it is not limited to *England*, *B.* 4. *Tit.* 17. *ſ.* 17. And in the caſe of the duke of *Douglas*, *v. Lockhart of Lee*, *Dec.* 18. 1753, the court of ſeſſion was of opinion that this act did extend to *Scotland*. But on appeal to the houſe of Lords, this determination was reverſed: the Lords being of opinion, that it is limited to *England*.

So the 32 *G.* 2. *c.* 28. for relief of *debtors* with reſpect to the impriſonment of their perſons, altho' general, yet referring chiefly to the manner of proceeding in the *Engliſh* courts, which is not compatible to the courts of *Scotland*, doth not ſeem to extend unto *Scotland*. 3 *M*ᶜ *Douall. B.* 4 *Tit.* 37. *ſ.* 14.

So alſo the ſtatutes of the 8 *An. c.* 14. and 11 *G.* 2. *c.* 19 concerning *diſtreſſes* for rent, tho' general, yet extend only to *England*; becauſe they are inconſiſtent with the method of recovering rent by the laws of *Scotland*. 1 *M*ᶜ *Douall. B.* 1. *Tit.* 17. *ſ.* 9.

The ſtatute of the 6 *G.* 2. *c.* 31. recites in general, "Whereas the *laws now in being* are not ſufficient to provide for the ſecuring and indemnifying pariſhes and other places from the charges ariſing from *baſtard* children;" and therefore enacts, that on application to a juſtice, he may cauſe the reputed father to be apprehended, and commit him to priſon, unleſs he give ſecurity to indemnify the pariſh, or enter into recognizance to appear at the next ſeſſions, and to abide ſuch order as ſhall be made in purſuance of the ſtatute of the 18 *Eliz. c.* 3. Which act, for the reaſons abovementioned may ſeem not only to extend unto *Scotland*, but alſo to bring in conſequentially the ſaid ſtatute of the 18 *Eliz.*

The ſtatute of the 31 *El. c.* 5. limiting the time within which actions ſhall be brought on *penal ſtatutes* then made or *to be made*, hath been adjudged by the court of ſeſſion to be the rule in *Scotland* as to *Britiſh* ſtatutes. 1 *M*ᶜ *Douall. B.* 1. *Tit.* 1. *ſ.* 26. 2 *M*ᶜ *Douall. B.* 4. *Tit.* 24 *ſ.* 15.

And generally, Mr. *M*ᶜ*Douall* obſerves, when a *Britiſh* ſtatute, extending to *Scotland*, enacts a crime, tho' it mentions the ſame to be triable before the courts at *Weſtminſter*, without directing where it is to be proſecuted when committed in *Scotland* (as is ſometimes done); yet the ſame is to be tried before the court of juſticiary, to which are ſaved all its powers and privileges by the articles of the union; for, as to all crimes committed in *Scotland*, that

that court is regularly competent, and conſequently ſuch ſtatuary crimes committed there muſt be ſued before the ſame, to go unpuniſhed. Thus where a ſtatute in *England*, before the union, enacted any thing to be a crime, and directed the ſame to be proſecuted before a certain court; yet if it did not provide, that it ſhould not be ſued elſewhere, the other courts, that would have been competent at common law, if no ſuch particular court had been ſpecified, have juriſdiction likewiſe in it. For (in the words of lord *Coke*, 2 *Inſt.* 448.) if the meaning of ſuch ſtatutes were to exclude other judges than thoſe that are named, there muſt be words negative, as, not in any other court, or not before any other judges. And by the ſame rule, where a *Britiſh* ſtatute mentions particular judges for having cognizance in any crime thereby enacted, without ſuch excluſive words; the judges ordinary, either in *South* or *North Britain* reſpectively, muſt be competent to try the ſame, as the crime happens to be committed in the one or the other part of the united kingdom. 2 *Mc Douall. B.* 4. *Tit.* 9. *ſ.* 21.

Upon the whole, the juſtices in *Scotland* ſeem to have more power, than hath uſually been exerciſed there. And they were, by the aforeſaid inſtructions, under ſeveral diſcouragements. They had only a concurrent juriſdiction with the owners of franchiſes; or rather an inferior juriſdiction, being only to act in caſe the other ſhould neglect for a certain number of days. They were accountable and ſubordinate to the privy council; and in many caſes were only to report offences to the council or others, rather as informers than judicial officers. And above all, whilſt the clanſhips ſubſiſted, it was ridiculous for a juſtice of the peace to ſend a conſtable, either alone, or attended with the power of his conſtablewick, to apprehend an offender; when the whole confederacy would immediately appear in arms to defend him. But now theſe circumſtances are greatly altered, as by other ſtatutes, ſo particularly, by the act for aboliſhing the hereditary juriſdictions (20 *G.* 2. *c.* 43); by the act for diſſolving the privy council of *Scotland*, and enacting that there ſhall be only one privy council of *Great Britain*, which ſhall have the ſame power as the privy council of *England* had before, and no other; and giving power to the juſtices in *Scotland* in all matters relating to the peace which the juſtices have in *England* (6 *An. c* 6.); and by the act of the 20 *G.* 2. *c.* 50. for aboliſhing the tenure of ward holding, and thereby diſſolving the

the feudal combinations, againſt which the peace officer of any kind could oppoſe but a very feeble reſiſtance.

It hath appeared, that the law concerning the office of a juſtice of the peace is the ſame, in both parts of the united kingdom, in all matters relating to the revenue, and to the preſervation of the public peace, and in abundance of other inſtances by *Britiſh* ſtatutes. Theſe ſtatutes, except where they particularly relate to *Scotland*, are generally drawn up by *Engliſhmen*, and conſequently, follow the *Engliſh* mode of expreſſion, and apply to the *Engliſh* courſe of proceeding; and, without a judicial determination in particular caſes, it cannot expreſsly be defined, which of them extend to *Scotland*, and which do not. Or rather a parliamentary declaration would be uſeful in this reſpect, as it would ſettle all doubts at once. Or, it may be conſidered, as the laws of the two kingdoms in the inſtance before us are ſo near to each other already, whether it might not be convenient to advance one ſingle ſtep further, by enacting, that the office of a juſtice of the peace ſhall be the ſame throughout the whole united kingdom. In which caſe, it would previouſly be requiſite, to examine the laws of both kingdoms reſpectively, and from thence take out what may be uſeful, and repeal the reſt. For there are many things in the laws of either kingdom, which might be beneficially transferred into the other; and there is much rubbiſh in both, that incumbers the office, and had better be done away. In the mean time, the judicial courſe of proceeding in the ſeſſions might continue the ſame in *Scotland* as heretofore, according to the reſervation in the act of Queen *Anne* abovementioned, until time ſhall utterly wear off all diſtinctions; which at preſent (if examined) will be found to be chiefly nominal, differing more in technical terms and expreſſions, than in ſubſtance and reality.

END OF THE APPENDIX.

ERRATA.

VOL. I.

page. line.

5. 24. for *an*, read *any*.
20. 13. for *on*, read *an*.
69. 23. for *terms*, read *term*.
101. 2. for *walls*, read *wall*.
144. 22. for *matter*, read *matters*.
146. 38. for *that*, read *but*.
168. 42. for *conformed to himſelf*, read *conformed himſelf*.
181. 37. read, *to maintain an action on a bond made to their predeceſſors. 'Tis true, church-wardens may maintain an action for the goods of their church. But...*
209. 37. for *the child*, read *if the child*.
216. 21. for *blaſphemers*, read *blaſphemies*.
424. 30. for *attorney*, read *attorning*.
434. 29. for *out*, read *our*.
447. 23. for *good*, read *goods*.
475. 16. for *eſquire*, read *eſquires*.

VOL. II.

44. 16. for 2*d*. 4$\frac{1}{2}$, read 2$\frac{1}{4}$*d*.
48. 13. for 20, read 20*l*.
63. 27. for *above*, read *abode*.
95. 35. for *with*, read *within*.
113. 24. for *make*, read *made*.
117. 25. for *to party*, read *to the party*.
147. 26. for *mines*, read *wines*.
217. 35. for *gaming*, read *gaining*.
218. 20. for *whoſe*, read *thoſe*.
233. 32. for *taking*, read *taken*.
238. 1. for *words very*, read *words are very*.
402. 33. dele *ſaid*.
403. 44. after *laſt paſt*, inſert, *for the amending the highways in the ſaid townſhips*. And again, at page 404. line 22. inſert the ſame words.
421. 40. for *ſo conceal*, read *ſo to conceal*.
496. 31. for *found*, read *ſound*.

VOL. III.

11. 25. for *his*, read *this*.
100. 1. for *of*, read *for*.
167. 11. for 20, read 20*l*.
200. 7. for *lieutenant*, read *lieutenants*.
24. for *they*, read *any*.
255. 9. for *had*, read *head*.
287. 36. for *a*, read *the*.
335. 15. for *within term*, read *within the term*.
363. 8. for *not all*, read *not at all*.
369. 33. for *maneg*, read *maxey*.
387. 37. for *that if it*, read *that it*.

page. line.
397. 4. for *about*, read *above*.
399. 2. for *tons hay*, read *tons of hay*.
419. 36. for *the*, read *he*.
44. dele *from*.
432. 44. for *overſeers*, read *overſeers of the poor*.
436. 30. for *to*, read *do*.
447. 27. for *and likely*, read *and is likely*.

VOL. IV.

1. 13. for *from*, read *for*.
52. 40. for *diſpenſed*, read *diſpenſeth*.
88. 13. for *reaving*, read *reoving*.
28. for *the*, read *to*.
106. 13. for *at*, read *as*.
114. 34. for *do*, read *doth*.
151. 10. for *his*, read *ſaid*.
170. 29. read 12 *C*. 2. *c*. 32.
172. 30. for *and truly*, read *well and truly*.
218. 28. for *an*, read *and*.
224. 31. dele *not*.
227. 26. for *granted*, read *granting*.
235. 7. for *priſoners*, read *priſoner*.
242. 20. for *on one*, read *no one*.
252. 9. for *ſufficient for*, read *ſufficient ſureties for*.
254. 29. for *the keeper*, read *to the keeper*.
263. 2. for *ſerved*, read *ſevered*.
26. for *ſearches*, read *ſearchers*.
272. 24. for *on*, read *in*.
275. 22. for *good*, read *goods*.
283. 43. for *expected*, read *excepted*.
300. 8. for *perſon*, read *perſons*.
303. 35. for *contended*, read *contented*.
304. 3. for *to*, read *or*.
305. 42. for *given*, read *giving*.
313. 35. for *made*, read *may*.
314. 19. for *perſons*, read *perſon*.
315. 18. for *to juſtice*, read *to a juſtice*.
316. 24. for *where virtue*, read *where by virtue*.
329. 7. add, *party to come before him*. 2 HAW. 84.
368. 2. for *grien*, read *given*.
369. 45. after *offender*, add *is not known*.
374. 3. for *or*, read *of*.
423. 31. read *expence of recovering*.
34. for *plabes*, read *places*.

Other ſmaller miſtakes, which do not affect the ſenſe, are humbly ſubmitted to the reader's candor.

A TABLE OF THE STATUTES contained in this work, SPECIFYING The Titles under which they are inſerted.

HEN. III.

9 *HEN.* 3. *c.* 14. clergy.
9 *H.* 3. *c.* 15. bridges.
9 *H.* 3. *c.* 17. torn.
9 *H.* 3. *c.* 35. torn.
51 *H.* 3. *ſt.* 4. diſtreſs.
52 *H.* 3. *c.* 4. diſtreſs.
52 *H.* 3. *c.* 10. clergymen, torn.
52 *H.* 3. *c.* 15. diſtreſs.

EDW. I.

3 *Ed.* 1. *c.* 4. wreck.
3 *Ed.* 1. *c.* 9. coroner, felony, hue and cry.
3 *Ed.* 1. *c.* 10. coroner.
3 *Ed.* 1. *c.* 12. mute.
3 *Ed.* 1. *c.* 13. rape, women.
3 *Ed.* 1. *c.* 14. acceſſary, proceſs.
3 *Ed.* 1. *c.* 15. acceſſary, bail, burning, coin, homicide, larceny, priſon breaking, treaſon.
3 *Ed.* 1. *c.* 20. game.
3 *Ed.* 1. *c.* 25. maintenance.
3 *Ed.* 1. *c.* 26. extortion.
3 *Ed.* 1. *c.* 34. ſlander.
4 *Ed.* 1. *ſt.* 2. coroner, treaſure trove.
13 *Ed.* 1. *circumſpecte agatis*; clergymen, ſlander.
13 *Ed.* 1. *ſt.* 2. *c.* 12. appeal.
13 *Ed.* 1. *ſt.* 1. *c.* 13. torn.
13 *Ed.* 1. *ſt.* 1. *c.* 34. rape, wife.
13 *Ed.* 1. *ſt.* 1. *c.* 38. jurors.
13 *Ed.* 1. *ſt.* 1. *c.* 39. ſheriff.
13 *Ed.* 1. *ſt.* 1. *c.* 46. burning, wood.
13 *Ed.* 1. *ſt.* 1. *c.* 47. game.
13 *Ed.* 1. *ſt.* 1. *c.* 49. buying of titles.
13 *Ed.* 1. *ſt.* 2. *c.* 1. hue and cry, robbery.
13 *Ed.* 1. *ſt.* 2. *c.* 2. robbery.
13 *Ed.* 1. *ſt.* 2. *c.* 4. hue and cry, watch.
13 *Ed.* 1. *ſt.* 2. *c.* 6. churchyard, conſtable, hue and cry.

13 *Ed.* 1. *ſt.* 4. clergymen, ſlander.
21 *Ed.* 1. *ſt.* 2. game.
28 *Ed.* 1. *c.* 11. maintenance.
33 *Ed.* 1. *ſt.* 2. conſpiracy, maintenance.
33 *Ed.* 1. *ſt.* 3. maintenance.
33 *Ed.* 1. *ſt.* 4. jurors.

EDW. II.

1 *Ed.* 2. *ſt.* 2. priſon breaking.
9 *Ed.* 2. *c.* 3. clergymen.
9 *Ed.* 2. *c.* 4. ſlander.
9 *Ed.* 2. *c.* 9. clergymen, diſtreſs.
9 *Ed.* 2. *ſt.* 2. ſheriff.
17 *Ed.* 2. wreck.
17 *Ed.* 2. *ſt.* 1. *c.* 9, 10. lunatics.
17 *Ed.* 2. *ſt.* 1. *c.* 16. forfeiture.
18 *Ed.* 2. hue and cry.

EDW. III.

1 *Ed.* 3. *c.* 14. maintenance.
1 *Ed.* 3. *c.* 16. juſtices.
1 *Ed.* 3. *c.* 17. torn.
2 *Ed.* 3. *c.* 3. affray, forcible entry, riot.
4 *Ed.* 3. *c.* 2. juſtices.
4 *Ed.* 3. *c.* 9. ſheriff.
5 *Ed.* 3. *c.* 10. jurors.
5 *Ed.* 3. *c.* 14. watch.
11 *Ed.* 3. *c.* 3. wool.
14 *Ed.* 3. *ſt.* 1. *c.* 7. ſheriff.
14 *Ed.* 3. *ſt.* 1. *c.* 8. coroner.
14 *Ed.* 3. *ſt.* 1. *c.* 10. gaol, ſheriff.
18 *Ed.* 3. *ſt.* 2. *c.* 2. juſtices.
20 *Ed.* 3. *c.* 4. maintenance.
25 *Ed.* 3. *ſt.* 3. *c.* 4. clergy.
25 *Ed.* 3. *ſt.* 5. *c.* 2. coin, treaſon.
25 *Ed.* 3. *ſt.* 5. *c.* 14. proceſs.
25 *Ed.* 3. *ſt.* 6. popery.
27 *Ed.* 3. *c.* 1. popery, præmunire.
27 *Ed.* 3. *c.* 2. pardon.
27 *Ed.* 3. *ſt.* 2. *c.* 8. jurors.
28 *Ed.* 3. *c.* 6. coroner.
28 *Ed.* 3. *c.* 7. ſheriff.
28 *Ed.* 3. *c.* 11. robbery.
28 *Ed.* 3. *c.* 13. jurors.
31 *Ed.* 3. *ſt.* 1. *c.* 15. torn.
34 *Ed.* 3. *c.* 1. arreſt, barraty, juſtices, riot, ſurety.
34 *Ed.* 3. *c.* 5. juſtices.
34 *Ed.* 3. *c.* 8. jurors.
34 *Ed.* 3. *c.* 22. game.
37 *Ed.* 3. *c.* 19. game.

38 *Ed.* 3. *ſt.* 1. *c.* 12. jurors, maintenance.
42 *Ed.* 3. *c.* 9. eſtreat.
50 *Ed.* 3. *c.* 5. arreſt, churchyard, clergymen, publick worſhip.

RICH. II.

1 *R.* 2. *c.* 4. maintenance.
1 *R.* 2. *c.* 9. maintenance.
1 *R.* 2. *c.* 11. ſheriff.
1 *R.* 2. *c.* 15. arreſt, churchyard, clergymen, publick worſhip.
2 *R.* 2. *ſt.* 1. *c.* 5. ſlander.
3 *R.* 2. *c.* 3. popery.
5 *R.* 2. *c.* 8. forcible entry.
6 *R.* 2. *c.* 6. rape.
7 *R.* 2. *c.* 12. popery.
12 *R.* 2. *c.* 10. ſeſſions.
12 *R.* 2. *c.* 11. ſlander.
12 *R.* 2. *c.* 15. popery.
13 *R.* 2. *c.* 7. juſtices.
13 *R.* 2. *c.* 13. game.
13 *R.* 2. *c.* 19. game.
13 *R.* 2. *ſt.* 2. *c.* 1. pardon, rape.
13 *R.* 2. *ſt.* 2. *c.* 2. popery.
13 *R.* 2. *ſt.* 2. *c.* 3. popery.
14 *R.* 2. *c.* 11. ſeſſions.
15 *R.* 2. *c.* 2. forcible entry, riot.
16 *R.* 2. *c.* 5. popery, præmunire.
17 *R.* 2. *c.* 9. game.
20 *R.* 2. *c.* 1. affray.

HEN. IV.

4 *H.* 4. *c.* 5. ſheriff.
4 *H.* 4. *c.* 18, 19. attorney.
5 *H.* 4. *c.* 3. watch.
5 *H.* 4. *c.* 10. commitment, gaol.
7 *H.* 4. *c.* 3. eſtreat.
7 *H.* 4. *c.* 8. popery.
13 *H.* 4. *c.* 7. riot.

HEN. V.

1 *H.* 5. *c.* 4. attorney, ſheriff.
1 *H.* 5. *c.* 5. addition, indictment.
2 *H.* 5. *c.* 4. ſeſſions.
2 *H.* 5. *c.* 8. riot.
2 *H.* 5. *c.* 9. riot.
2 *H.* 5. *ſt.* 2. *c.* 1. juſtices.
3 *H.* 5. *ſt.* 2. *c.* 4. popery.

HEN. VI.

2 *H.* 6. *c.* 15. game.
8 *H.* 6. *c.* 5. weights.

8 *H.* 6. *c.* 9. forcible entry, jurors.
8 *H.* 6. *c.* 10. proceſs.
8 *H.* 6. *c.* 12. larceny.
8 *H.* 6. *c.* 14. riot.
8 *H.* 6. *c.* 22. wool.
8 *H.* 6. *c.* 29. jurors.
11 *H.* 6. *c.* 6. juſtices.
14 *H.* 6. *c.* 4. ſeſſions.
18 *H.* 6. *c.* 19. ſoldiers.
20 *H.* 6. *c.* 9. women.
23 *H.* 6. *c.* 8. ſheriff.
23 *H.* 6. *c.* 10. arreſt, ſheriff.
31 *H.* 6. *c.* 9. women.

EDW. IV.

1 *Ed.* 4. *c.* 2. proceſs, torn.
4 *Ed.* 4. *c.* 1. ſervants, wool.
7 *Ed.* 4. *c.* 1. wool.
7 *Ed.* 4. *c.* 3. wool.
17 *Ed.* 4. *c.* 4. tiles.
17 *Ed.* 4. *c.* 6. ſheriff.
22 *Ed.* 4. *c.* 6. game.

RICH. III.

1 *R.* 3. *c.* 3. bail, forfeiture.
1 *R.* 3. *c.* 4. jurors, torn.

HEN. VII.

1 *H.* 7. *c.* 4. clergymen.
1 *H.* 7. *c.* 7. game.
3 *H.* 7. *c.* 1. appeal, coroner, homicide, jurors, recognizance, ſurety.
3 *H.* 7. *c.* 2. acceſſary, women.
3 *H.* 7. *c.* 3. commitment, gaol.
3 *H.* 7. *c.* 11. wool.
4 *H.* 7. *c.* 3. butchers.
4 *H.* 7. *c.* 13. clergy.
4 *H.* 7. *c.* 20. information.
7 *H.* 7. *c.* 1. ſoldiers.
11 *H.* 7. *c.* 4. weights.
11 *H.* 7. *c.* 15. county court, eſtreat.
11 *H.* 7. *c.* 17. game.
12 *H.* 7. *c.* 1. wool.
19 *H.* 7. *c.* 6. pewter.
19 *H.* 7. *c.* 10. gaol, ſheriff.
19 *H.* 7. *c.* 11 game.
19 *H.* 7. *c.* 13. jurors, riot.

A TABLE

HEN. VIII.

3 *H.* 8. *c.* 5. ſoldiers.
3 *H.* 8. *c.* 11. phyſicians.
3 *H.* 8. *c.* 12. jurors.
4 *H.* 8. *c.* 7. pewter.
5 *H.* 8. *c.* 2. wool.
5 *H.* 8. *c.* 6. conſtable, jurors, phyſicians.
6 *H.* 8. *c.* 8. wool.
14 & 15 *H.* *c.* 8. *c.* 3. wool.
14 & 15 *H.* 8. *c.* 5. phyſicians.
14 & 15 *H.* 8. *c.* 10. game.
14 & 15 *H.* 8. *c.* 11. wool.
21 *H.* 8. *c.* 7. apprentices, infants, larceny, ſervants.
21 *H.* 8. *c.* 11. reſtitution.
21 *H.* 8. *c.* 13. bankrupt, clergymen.
22 *H.* 8. *c.* 5. bridges, county rate.
22 *H.* 8. *c.* 11. banks.
22 *H.* 8. *c.* 14. jurors.
23 *H.* 8. *c.* 1. burning.
23 *H.* 8. *c.* 5. ſewers.
23 *H.* 8. *c.* 3. jurors.
23 *H.* 8. *c.* 17. wool.
24 *H.* 8. *c.* 5. burglary, homicide, robbery.
25 *H.* 8. *c.* 3. burning.
25 *H.* 8. *c.* 6. buggery.
25 *H.* 8. *c.* 9. pewter.
25 *H.* 8. *c.* 11. game.
25 *H.* 8. *c.* 13. cattle, ſheep.
25 *H.* 8. *c.* 18. wool.
25 *H.* 8. *c.* 20. præmunire.
26 *H.* 8. *c.* 14. præmunire.
27 *H.* 8. *c.* 16. inrollment.
27 *H.* 8. *c.* 20. tithes.
27 *H.* 8. *c.* 24. juſtices.
28 *H.* 8. *c.* 14. wine.
32 *H.* 8. *c.* 7. tithes.
32 *H.* 8. *c.* 9. buying of titles, maintenance.
32 *H.* 8. *c.* 13. horſes.
32 *H.* 8. *c.* 37. diſtreſs.
32 *H.* 8. *c.* 40. conſtable, phyſicians.
33 *H.* 8. *c.* 1. cheat.
33 *H.* 8. *c.* 3. wool.
33 *H.* 8. *c.* 4. pewter.
33 *H.* 8. *c.* 6. game.
33 *H.* 8. *c.* 7. pewter.
33 *H.* 8. *c.* 9. gaming.
33 *H.* 8. *c.* 16. wool.
33 *H.* 8. *c.* 17. hemp.
33 *H.* 8. *c.* 23. jurors.

34 & 35 *H.* 8. *c.* 14. clergy, clerk of the peace.
35 *H.* 8. *c.* 6. jurors.
35 *H.* 8. *c.* 17. wood.
37 *H.* 8. *c.* 1. clerk of the peace, cuſtos rotulorum, juſtices.
37 *H.* 8. *c.* 6. burning, wood.
37 *H.* 8. *c.* 8. indictment.
37 *H.* 8. *c.* 23. wine.

EDW. VI.

1 *Ed.* 6. *c.* 1. publick worſhip.
1 *Ed.* 6. *c.* 6. wool.
1 *Ed.* 6. *c.* 7. juſtices.
1 *Ed.* 6. *c.* 12. introduction, burning, forfeiture, larceny, peers, treaſon.
2 & 3 *Ed.* 6. *c.* 1. publick worſhip.
2 & 3 *Ed.* 6. *c.* 2. ſoldiers.
2 & 3 *Ed.* 6. *c.* 10. exciſe (malt).
2 & 3 *Ed.* 6. *c.* 15. alehouſes, bread, butchers, juſtices.
2 & 3 *Ed.* 6. *c.* 19. faſt days.
2 & 3 *Ed.* 6. *c.* 24. acceſſary, homicide.
2 & 3 *Ed.* 6. *c.* 25. county court.
2 & 3 *Ed.* 6. *c.* 37. pewter.
3 & 4 *Ed.* 6. *c.* 1. cuſtos rotulorum.
3 & 4 *Ed.* 6. *c.* 2. wool.
3 & 4 *Ed.* 6. *c.* 3. wood.
3 & 4 *Ed.* 6. *c.* 10. popery.
3 & 4 *Ed.* 6. *c.* 19. cattle.
3 & 4 *Ed.* 6. *c.* 21. butter and cheeſe.
5 & 6 *Ed.* 6. *c.* 4. churchyard.
5 & 6 *Ed.* 6. *c.* 6. wool.
5 & 6 *Ed.* 6. *c.* 9. larceny.
5 & 6 *Ed.* 6. *c.* 10. burning.
5 & 6 *Ed.* 6. *c.* 11. forfeiture.
5 & 6 *Ed.* 6. *c.* 14. badgers, butter and cheeſe, cattle, foreſtalling, juſtices.
5 & 6 *Ed.* 6. *c.* 24. wool.
5 & 6 *Ed.* 6. *c.* 25. alehouſes, conviction.

MARY.

1 *M. ſ.* 1. *c.* 1. treaſon.
1 *M. ſ.* 2. *c.* 3. publick worſhip.
1 *M. ſ.* 2. *c.* 6. coin.
1 *M. ſ.* 2. *c.* 8. juſtices, ſheriff.
1 *M. ſ.* 2. *c.* 9. phyſicians.
1 & 2 *P. & M. c.* 4. vagrants.
1 & 2 *P. & M. c.* 5. wood.
1 & 2 *P. & M. c.* 10. jurors.
1 & 2 *P. & M. c.* 11. coin.
1 & 2 *P. & M. c.* 12. diſtreſs.

1 & 2 *P. & M.* *c.* 13. bail, coroner, evidence, examination, juſtices, recognizance.
1 & 2 *P. & M.* *c.* 14. wool.
2 & 3 *P. & M.* *c.* 3. cattle.
2 & 3 *P. & M.* *c.* 7. horſes.
2 & 3 *P. & M.* *c.* 10. evidence, examination.
2 & 3 *P. & M.* *c.* 13. wool.
4 & 5 *P. & M.* *c.* 3. ſoldiers.
4 & 5 *P. & M.* *c.* 4. burning.
4 & 5 *P. & M.* *c.* 5. wool.
4 & 5 *P. & M.* *c.* 7. jurors.
4 & 5 *P. & M.* *c.* 8. women.

ELIZ.

1 *El.* *c.* 2. churchwardens, common prayer, diſſenters, lord's day, popery, publick worſhip.
1 *El.* *c.* 12. linen.
1 *El.* *c.* 14. wool.
1 *El.* *c.* 17. game.
5 *El.* *c.* 1. diſſenters, popery, præmunire, ſeſſions.
5 *El.* *c.* 4. apprentices, infants, ſervants.
5 *El.* *c.* 5. apprentices, churchwardens, faſt days, infants, poor, wine.
5 *El.* *c.* 9. evidence, perjury.
5 *El.* *c.* 11. coin.
5 *El.* *c.* 12. badgers.
5 *El.* *c.* 14. forgery.
5 *El.* *c.* 15. prophecies.
5 *El.* *c.* 20. vagrants.
5 *El.* *c.* 21. game.
5 *El.* *c.* 26. inrollment.
8 *El.* *c.* 3. ſheep.
8 *El.* *c.* 4. indictment, larceny.
8 *El.* *c.* 7. wool.
8 *El.* *c.* 8. horſes.
8 *El.* *c.* 9. alehouſes.
8 *El.* *c.* 12. wool.
13 *El.* *c.* 2. popery.
13 *El.* *c.* 7. bankrupt.
13 *El.* *c.* 9. ſewers.
13 *El.* *c.* 25. badgers, foreſtalling.
14 *El.* *c.* 3. coin.
14 *El.* *c.* 5. county rate, gaol.
14 *El.* *c.* 9. jurors.
14 *El.* *c.* 12. wool.
18 *El.* *c.* 1. coin.
18 *El.* *c.* 3. baſtards.
18 *El.* *c.* 5. information.
18 *El.* *c.* 7. burglary, clergy, rape, women.
23 *El.* *c.* 1. diſſenters, popery, publick worſhip.

23 *El.* *c.* 10. game.
27 *El.* *c.* 2. acceſſary, popery.
27 *El.* *c.* 7. jurors.
27 *El.* *c.* 12. ſheriff.
27 *El.* *c.* 13. black act, hue and cry robbery.
29 *El.* *c.* 6. diſſenters, popery, publick worſhip.
31 *El.* *c.* 3. proceſs.
31 *El.* *c.* 4. ſtores.
31 *El.* *c.* 5. buying of titles, extortion, foreſtalling, gaming, indictment, information, maintenance.
31 *El.* *c.* 7. cottage.
31 *El.* *c.* 11. forcible entry.
31 *El.* *c.* 12. horſes, reſtitution.
35 *El.* *c.* 1. diſſenters.
35 *El.* *c.* 2. popery.
35 *El.* *c.* 7. faſt days.
35 *El.* *c.* 10. wool.
39 *El.* *c.* 9. women.
39 *El.* *c.* 15. larceny.
39 *El.* *c.* 17. vagrants.
39 *El.* *c.* 20. wool.
43 *El.* *c.* 2. apprentices, churchwardens, clergy, commitment, conſtable, cottage, country rate, gaol, infants, poor.
43 *El.* *c.* 3. ſoldiers.
43 *El.* *c.* 7. corn, wood.
43 *El.* *c.* 10. wool.
43 *El.* *c.* 13. burning, northern borders.
43 *El.* *c.* 14. fuel.

JAMES I.

1 *J.* *c.* 4. popery, publick worſhip.
1 *J.* *c.* 6. ſervants.
1 *J.* *c.* 8. homicide, indictment.
1 *J.* *c.* 9. alehouſes, churchwardens.
1 *J.* *c.* 11. polygamy.
1 *J.* *c.* 15. bankrupt.
1 *J.* *c.* 17. apprentices.
1 *J.* *c.* 22. butchers, leather, lord's day.
1 *J.* *c.* 25. corn.
1 *J.* *c.* 27. churchwardens, game.
1 *J.* *c.* 31. plague.
3 *J.* *c.* 4. churchwardens, diſſenters, lord's day, popery, publick worſhip.
3 *J.* *c.* 5. attorney, diſſenters, phyſicians, popery, publick worſhip.
3 *J.* *c.* 7. attorney.
3 *J.* *c.* 10. commitment, conſtable, felony, larceny.
3 *J.* *c.* 12. game.
3 *J.* *c.* 13. game.
3 *J.* *c.* 16. wool.

3 *J.* *c.* 17. wool.
3 *J.* *c.* 21. blaſphemy.
4 *J.* *c.* 1. northern borders.
4 *J.* *c.* 2. wool.
4 *J.* *c.* 4. alehouſes.
4 *J.* *c.* 5. alehouſes, churchwardens.
4 *J.* *c.* 6. leather.
7 *J.* *c.* 1. northern borders.
7 *J.* *c.* 3. apprentices.
7 *J.* *c.* 4. baſtards, county rate, houſe of correction, poor, vagrants.
7 *J.* *c.* 5. churchwardens, conſtables, hue and cry, juſtices, poor.
7 *J.* *c.* 6. popery.
7 *J.* *c.* 7. ſervants.
7 *J.* *c.* 8. cattle.
7 *J.* *c.* 10. alehouſes.
7 *J.* *c.* 11. game.
7 *J.* *c.* 12. evidence.
7 *J.* *c.* 13. game.
7 *J.* *c.* 16. wool.
21 *J.* *c.* 3. præmunire.
21 *J.* *c.* 4. information, proceſs.
21 *J.* *c.* 7. alehouſes, churchwardens.
21 *J.* *c.* 8. ſurety.
21 *J.* *c.* 12. churchwardens, conſtables, juſtices, poor.
21 *J.* *c.* 15. forcible entry.
21 *J.* *c.* 16. ſlander.
21 *J.* *c.* 18. wool.
21 *J.* *c.* 19. bankrupt.
21 *J.* *c.* 22. butter and cheeſe.
21 *J.* *c.* 26. bail.
21 *J.* *c.* 27. baſtard, homicide.
21 *J.* *c.* 28. apprentices, horſes, ſanctuary.

CHARLES I.

1 *C.* *c.* 1. churchwardens, lord's day.
1 *C.* *c.* 4. alehouſes.
3 *C.* *c.* 1. butchers, carrier, cattle, lord's day.
3 *C.* *c.* 2. popery.
3 *C.* *c.* 3. conviction.
3 *C.* *c.* 4. apprentices, baſtards, cattle, poor.
16 *C.* *c.* 19. churchwardens, weights.
16 *C.* *c.* 21. gunpowder.

CHARLES II.

12 *C.* 2. *c.* 4. exciſe.
12 *C.* 2. *c.* 22. wool.
12 *C.* 2. *c.* 23. exciſe (ſpirtuous liquors).
12 *C.* 2. *c.* 24. alehouſes, exciſe (ale, ſpirituous liquors.)
12 *C.* 2. *c.* 25. wine.

12 *C.* 2. *c.* 32. ſheep. wool.
12 *C.* 2. *c.* 34. tobacco.
13 *C.* 2. *c.* 1. præmunire.
13 *C.* 2. *c.* 5. petition.
13 *C.* 2. *c.* 10. game.
13 *C.* 2. *ſt.* 2. *c.* 1. office.
13 & 14 *C.* 2. *c.* 1. diſſenters.
13 & 14 *C.* 2. *c.* 3. militia.
13 & 14 *C.* 2. *c.* 4. churchwardens, common prayer, diſſenters, lecturer, publick worſhip.
13 & 14 *C.* 2. *c.* 5. apprentices, wool.
13 & 14 *C.* 2. *c.* 7. leather.
13 & 14 *C.* 2. *c.* 11. exciſe, jurors.
13 & 14 *C.* 2. *c.* 12. baſtards, conſtable, poor, ſervants, vagrants.
13 & 14 *C.* 2. *c.* 13. buttons.
13 & 14 *C.* 2. *c.* 15. ſervants, ſilks.
13 & 14 *C.* 2. *c.* 18. wool.
13 & 14 *C.* 2. *c.* 19. wool.
13 & 14 *C.* 2. *c.* 21. ſheriff.
13 & 14 *C.* 2. *c.* 22. northern borders.
13 & 14 *C.* 2. *c.* 24. bankrupt.
13 & 14 *C.* 2. *c.* 26. butter, churchwardens.
15 *C.* 2. *c.* 2. wood.
15 *C.* 2. *c.* 4. militia.
15 *C.* 2. *c.* 7. corn, foreſtalling, tobacco.
15 *C.* 2. *c.* 8. butchers.
15 *C.* 2. *c.* 11. exciſe (ale, coffee).
15 *C.* 2. *c.* 15. apprentices, linen.
16 *C.* 2. *c.* 7. gaming.
17 *C.* 2. *c.* 2. diſſenters.
17 *C.* 2. *c.* 3. church.
17 *C.* 2. *c.* 7. diſtreſs.
18 *C.* 2. *c.* 2. cattle, game.
18 *C.* 2. *c.* 3. northern borders.
19 *C.* 2. *c.* 4. county rate, gaol.
20 *C.* 2. *c.* 5. leather.
20 *C.* 2. *c.* 6. ſervants.
20 *C.* 2. *c.* 7. cattle.
22 *C.* 2. *c.* 1. churchwardens.
22 *C.* 2. *c.* 5. ſtores, wool.
22 *C.* 2. *c.* 8. churchwardens, corn, weights.
22 *C.* 2. *c.* 13. corn.
22 & 23 *C.* 2. *c.* 1. maim.
22 & 23 *C.* 2. *c.* 5. exciſe (ale).
22 & 23 *C.* 2. *c.* 7. burning, cattle, corn, horſes, ſheep, wood.
22 & 23 *C.* 2. *c.* 8. wool.
22 & 23 *C.* 2. *c.* 12. corn, weights.
22 & 23 *C.* 2. *c.* 22. clerk of the peace, eſtreat.
22 & 23 *C.* 2. *c.* 25. game.
22 & 23 *C.* 2. *c.* 26. tobacco.
25 *C.* 2. *c.* 2. conſtable, diſſenters, oaths, office, popery, ſeſſions.

29 *C.* 2. *c.* 3. evidence.
29 *C.* 2. *c.* 7. arreſt, churchwardens, Lord's day, proceſs, robbery.
29 & 30 *C.* 2. *c.* 2. northern borders.
30 *C.* 2. *c.* 3. churchwardens, ſeſſions, wool.
30 *C.* 2. *c.* 8. coals.
30 *C.* 2. *c.* 9. game.
30 *C.* 2. *ſt.* 2. *c.* 1. diſſenters, oaths, popery.
31 *C.* 2. *c.* 1. ſoldiers.
31 *C.* 2. *c.* 2. bail, gaol, præmunire, treaſon.
32 *C.* 2. *c.* 1. wool.
32 *C.* 2. *c.* 2. butter, cattle, churchwardens.

JAMES II.

1 *J.* 2. *c.* 8. gunpowder.
1 *J.* 2. *c.* 17. poor.
1 *J.* 2. *c.* 19. corn.

WILLIAM III.

1 *W.* *c.* 9. popery.
1 *W.* *c.* 12. corn.
1 *W.* *c.* 15. popery.
1 *W.* *c.* 18. blaſphemy, churchwardens, conſtable, diſſenters, jurors, oaths, publick worſhip.
1 *W.* *c.* 21. clerk of the peace, cuſtos rotulorum.
1 *W.* *c.* 22. exciſe (ale).
1 *W.* *c.* 24. alehouſes, exciſe (ale).
1 *W.* *c.* 26. popery.
1 *W.* *c.* 32. wool.
1 *W.* *c.* 33. leather.
1 *W.* *ſ.* 2. *c.* 2. bail.
2 *W.* *c.* 5. diſtreſs.
2 *W.* *ſ.* 2. *c.* 4. exciſe (candles, glaſs).
2 *W.* *ſ.* 2. *c.* 8. hay.
3 *W.* *c.* 8. butter.
3 *W.* *c.* 9. acceſſary, burglary, clergy, larceny, mute, proceſs, women.
3 *W.* *c.* 10. game.
3 *W.* *c.* 11. churchwardens, poor, ſeamen.
3 *W.* *c.* 12. carrier.
3 *W.* *c.* 15. exciſe (ſpirits).
4 *W.* *c.* 3. exciſe (ſpirits).
4 *W.* *c.* 4. bail.
4 *W.* *c.* 5. exciſe (leather, plate, ſpirits).
4 *W.* *c.* 7. butter.
4 *W.* *c.* 8. robbery.
4 *W.* *c.* 10. buttons.
4 & 5 *W.* *c.* 18. information, proceſs.
4 & 5 *W.* *c.* 22. proceſs.
4 & 5 *W.* *c.* 23. burning, game.

4 & 5 *W.* c. 24. clerk of the peace, eſtreat, jurors, ſeſſions, women.
5 *W.* c. 7. exciſe (ſalt).
5 *W.* c. 11. certiorari.
5 *W.* c. 13. pardon.
5 *W.* c. 20. exciſe.
5 *W.* c. 21. ſoldiers, ſtamps.
6 *W.* c. 1. exciſe.
6 *W.* c. 4. churchwardens, conſtables, jurors, phyſicians.
6 & 7 *W.* c. 12. ſtamps.
6 & 7 *W.* c. 13. game.
6 & 7 *W.* c. 17. apprentices, coin.
7 & 8 *W.* c. 3. evidence, treaſon.
7 & 8 *W.* c. 6. tithes.
7 & 8 *W.* c. 15. parliament.
7 & 8 *W.* c. 19. *coin.*
7 & 8 *W.* c. 24. attorney.
7 & 8 *W.* c. 28. wool.
7 & 8 *W.* c. 30. exciſe, (ale, ſpirits).
7 & 8 *W.* c. 31. exciſe (ſalt), forgery.
7 & 8 *W.* c. 32. infants, jurors, ſeſſions.
7 & 8 *W.* c. 34. diſtreſs, evidence, examination, jurors, oaths, tithes.
8 & 9 *W.* c. 10. jurors.
8 & 9 *W.* c. 17. hay.
8 & 9 *W.* c. 19. exciſe, (ale, ſpirits).
8 & 9 *W.* c. 20. forgery.
8 & 9 *W.* c. 26. coin.
8 & 9 *W.* c. 30. apprentices, poor,
8 & 9 *W.* c. 31. partition.
8 & 9 *W.* c. 33. certiorari.
8 & 9 *W.* c. 36. ſervant.
9 & 10 *W.* c. 6. exciſe, (ſalt).
9 & 10 *W.* c. 7. fireworks.
9 & 10 *W.* c. 11. poor.
9 & 10 *W.* c. 15. award.
9 & 10 *W.* c. 21. coin.
9 & 10 *W.* c. 25. ſtamps.
9 & 10 *W.* c. 27. churchwardens, hawkers and pedlars.
9 & 10 *W.* c. 28. exciſe (plate).
9 & 10 *W.* c. 32. blaſphemy.
9 & 10 *W.* c. 40. wool.
9 & 10 *W.* c. 41. forgery, ſtores.
9 & 10 *W.* c. 43. ſilks.
9 & 10 *W.* c. 44. exciſe (ſalt), ſtamps.
10 *W.* c. 2. Buttons.
10 & 11 *W.* c. 4. exciſe (ſpirits).
10 & 11 *W.* c. 10. wool.
10 & 11 *W.* c. 12. militia.
10 & 11 *W.* c. 17. gaming.
10 & 11 *W.* c. 21. alehouſes, exciſe (ale, ſpirits).

10 & 11 *W.* *c.* 22. excife (ſalt).
10 & 11 *W.* *c.* 23. burglary, churchwardens, clerk of the peace, conſtable, indictment, larceny.
10 & 11 *W.* *c.* 24. Lord's day.
11 & 12 *W.* *c.* 3. buttons.
11 & 12 *W.* *c.* 4. popery, ſchoolmaſter.
11 & 12 *W.* *c.* 15. alehouſes, ſeſſions.
11 & 12 *W.* *c.* 19. county rate, gaol.
11 & 12 *W.* *c.* 20. corn, wool.
11 & 12 *W.* *c.* 21. lord's day.
12 & 13 *W.* *c.* 3. parliament.
12 & 13 *W.* *c.* 14. exciſe (plate).
12 & 13 *W.* *c.* 11. exciſe (ale, ſpirits).
13 *W.* *c.* 3. treaſon.

ANNE.

1 *An.* *c.* 8. juſtices.
1 *An.* *c.* 9. coin, exciſe (plate).
1 *An.* *c.* 15. apples.
1 *An.* *c.* 18. bridges, county rate.
1 *An.* *c.* 21. exciſe (ſalt)
1 *An.* *ſt.* 2. *c.* 9. acceſſary, burning.
1 *An.* *ſt.* 2. *c.* 13. jurors.
1 *An.* *ſt.* 2. *c.* 14. exciſe (ſpirits).
1 *An.* *ſt.* 2. 18. ſervants.
1 *An.* *ſt.* 2. *c.* 22. alehouſes, ſtamps.
2 & 3 *An.* c. 6. apprentices, county rate.
2 & 3 *An.* *c.* 14. exciſe (ſalt).
3 & 4 *An.* *c.* 4. hawkers.
3 & 4 *An.* *c.* 18. jurors, ſeſſions.
4 *An.* *c.* 6. exciſe, (ſpirits).
4 *An.* *c.* 12. exciſe (ſalt, ſpirits).
4 *An.* *c.* 14. churchwardens.
4 *An.* *c.* 16. jurors.
4 *An.* *c.* 19. apprentices.
4 *An.* *c.* 21. game.
5 *An.* *c.* 6. clergy.
5 *An.* *c.* 8. introduction, cattle, corn.
5 *An.* *c.* 14. game.
5 *An.* *c.* 20. ſilks.
5 *An.* *c.* 27. wine.
5 *An.* *c.* 29. corn, exciſe (ſalt).
5 *An.* *c.* 31. acceſſary, burglary, larceny, watch.
6 *An.* *c.* 7. præmunire, treaſon.
6 *An.* *c.* 8. wool.
6 *An.* *c.* 12. exciſe (ſalt).
6 *An.* *c.* 31. burning, churchwardens, ſervants.
7 *An.* *c.* 14. books.
7 *An.* *c.* 19. infants.
7 *An.* *c.* 21. treaſon.
7 *An.* *c.* 24. coin.

A TABLE

8 *An.* *c.* 6. buttons.
8 *An.* *c.* 7. exciſe, (ale).
8 *An.* *c.* 9. apprentices, exciſe (candles), poor, ſtamps.
8 *An.* *c.* 13. exciſe.
8 *An.* *c.* 14. diſtreſs.
9 *An.* *c.* 2. plague.
9 *An.* *c.* 5. parliament.
9 *An.* *c.* 6. exciſe (candles), gaming, leather.
9 *An.* *c.* 10. poſt.
9 *An.* *c.* 11. butchers, exciſe (leather), leather.
9 *An.* *c.* 12. alehouſes, exciſe (hops).
9 *An.* *c.* 14. gaming.
9 *An.* *c.* 15. fuel.
9 *An.* *c.* 16. aſſault.
9 *An.* *c.* 21. apprentices, forgery, poor.
9 *An.* *c.* 23. alehouſes exciſe (ſalt) hackney coaches, lord's day, ſtamps, wine.
9 *An.* *c.* 25. game.
9 *An.* *c.* 26. game.
10 *An.* *c.* 2. diſſenters.
10 *An.* *c.* 6. fuel.
10 *An.* *c.* 14. jurors.
10 *An.* *c.* 15. bankrupt.
10 *An.* *c.* 16. ſervants, wool.
10 *An.* *c.* 19. exciſe (linen, paper, ſoap), forgery, hackney coaches, ſtamps.
10 *An.* *c.* 23. parliament.
10 *An.* *c.* 25. militia.
10 *An.* *c.* 26. exciſe (candles, leather, ſoap, ſtarch, wire), gaming, ſtamps.
12 *An.* *c.* 2. alehouſes, exciſe (ale, malt), ſtamps.
12 *An.* *c.* 7. apprentices, burglary, infants, larceny, ſervants.
12 *An.* *c.* 18. poor.
12 *An.* *ſt.* 2. *c.* 3. exciſe (ſpirits).
12 *An.* *ſt.* 2. *c.* 9. exciſe (leather, linen, paper, ſoap, ſtarch), ſtamps.
12 *An.* *ſt.* 2. *c.* 14. popery.
12 *An.* *ſt.* 2. *c.* 18. ſhips, wreck.
12 *An.* *ſt.* 2. *c.* 19. exciſe, (linen, paper).

GEORGE I.

1 *G.* *c.* 2. exciſe (ſtarch).
1 *G.* *ſt.* 2. *c.* 2. exciſe (malt).
1 *G.* *ſt.* 2. *c.* 5. riot, ſeſſions.
1 *G.* *ſt.* 2. *c.* 6. diſtreſs, tithes.
1 *G.* *ſt.* 2. *c.* 13. conſtable, juſtices, oaths. office, popery.
1 *G.* *ſt.* 2. *c.* 15. ſervants, wool.
1 *G.* *ſt.* 2. *c.* 18. game.
1 *G.* *ſt.* 2. *c.* 25. ſeamen, ſtores.
1 *G.* *ſt.* 2. *c.* 36. exciſe (linen, paper, ſoap).
1 *G.* *ſt.* 2. *c.* 41. wool.

1 G. ſt. 2. c. 46. tobacco.
1 G. ſt. 2. c. 47. ſoldiers.
1 G. ſt. 2. c. 48. burning, wood.
1 G. ſt. 2. c. 55. popery.
1 G. ſt. 2. c. 57. hackney coaches, highways.
3 G. c. 4. exciſe (leather, ſpirits, ſtarch).
3 G. c. 11. game.
3 G. c. 15. burglary, clerk of the peace, eſtreat, gaol. larceny, ſheriff.
3 G. c. 16. ſheriff.
3 G. c. 18. popery.
3 G. c. 21. wool.
4 G. c. 6. hawkers.
4 G. c. 7. buttons.
4 G. c. 11. acceſſary, clergy, larceny, tranſportation, wool.
5 G. c. 2. exciſe (leather).
5 G. c. 4. diſſenters.
5 G. c. 6. office.
5 G. c. 8. poor.
5 G. c. 11. exciſe (linen) tobacco, wool.
5 G. c. 14. forgery.
5 G. c. 15. game.
5 G. c. 18. exciſe (ſalt).
5 G. c. 19. ſtamps.
5 G. c. 26. gunpowder.
5 G. c. 27. foreign ſervice.
5 G. c. 28. game.
6 G. c. 4. forgery.
6 G. c. 11. exciſe (hops, plate), forgery.
6 G. c. 16. burning, wood.
6 G. c. 18. forgery.
6 G. c. 19. baſtards, commitment, gaol, juſtices.
6 G. c. 21. alehouſes, exciſe (ale, hops, malt, ſpirits), poſt, ſtamps, wool.
6 G. c. 23. aſſault, burglary, county rate, robbery, tranſportation.
7 G. c. 3. plague.
7 G. c. 7. exciſe (linen).
7 G. c. 12. buttons.
7 G. c. 13. ſervants.
7 G. c. 20. exciſe (ale).
7 G. c. 31. bankrupt.
8 G. c. 2. gaming.
8 G. c. 4. exciſe (ſalt).
8 G. c. 6. oaths.
8 G. c. 8. plague.
8 G. c. 16. exciſe (ſalt).
8 G. c. 18. exciſe (ſpirits), tobacco.
8 G. c. 19. game.
8 G. c. 22. forgery, ſtock.
8 G. c. 27. butter.
9 G. c. 7. juſtices, poor.

9 G. c. 8. ſtores.
9 G. c. 9. wool.
9 G. c. 19. gaming.
9 G. c. 22. black act, burning, cattle, corn, game, letter, ſeſſions, wood.
9 G. c. 27. ſervants.
10 G. c. 4. oaths, popery.
10 G. c. 10. exciſe (coffee).
11 G. c. 7. exciſe (paper).
11 G. c. 8. ſtamps.
11 G. c. 9. forgery.
11 G. c. 23. gunpowder.
11 G. c. 29. ſhips.
11 G. c. 30. exciſe (candles, coffee, ſalt, ſoap, ſpirits).
12 G. c. 4. exciſe (malt).
12 G. c. 12. hackney coaches.
12 G. c. 28. exciſe (coffee, ſpirits).
12 G. c. 29. attorney.
12 G. c. 32. forgery.
12 G. c. 34. ſervants.
13 G. c. 7. exciſe (ale).
13 G. c. 23. ſervants, vagrants, wool.
13 G. c. 24. wool.

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1 G. 2. ſt. 2. c. 16. exciſe (malt).
1 G. 2. ſt. 2. c. 17. wine.
2 G. 2. c. 1. exciſe (malt).
2 G. 2. c. 21. homicide.
2 G. 2. c. 23. attorney, county court.
2 G. 2. c. 24. parliament.
2 G. 2. c. 25. forgery, larceny, perjury.
2 G. 2. c. 28. alehouſes, exciſe (ſpirits), gaming.
2 G. 2. c. 31. office.
2 G. 2. c. 36. ſeamen, ſervants.
3 G. 2. c. 7. exciſe (ale, malt).
3 G. 2. c. 8. wool.
3 G. 2. c. 20. exciſe (ſalt).
3 G. 2. c. 25. jurors, ſeſſions.
3 G. 2. c. 29. poor.
4 G. 2. c. 7. jurors.
4 G. 2. c. 14. exciſe, (coffee, ſtarch).
4 G. 2. c. 18. forgery.
4 G. 2. c. 26. indictment.
4 G. 2. c. 27. ſail cloth.
4 G. 2. c. 28. diſtreſs.
4 G. 2. c. 32. larceny.
4 G. 2. c. 33. poſt.
5 G. 2. c. 12. corn.
5 G. 2. c. 18. attorney, juſtices.

5 G. 2. c. 19. baſtards, certiorari, poor, ſeſſions.
5 G. 2. c. 20. gunpowder.
5 G. 2. c. 21. wool.
5 G. 2. c. 24. exciſe (coffee).
5 G. 2. c. 30. bankrupt.
6 G. 2. c. 14. indictment.
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6 G. 2. c. 27. attorney.
6 G. 2. c. 31. baſtards.
6 G. 2. c. 35. gaming.
6 G. 2. c. 37. banks, black act, exciſe (hops), jurors.
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11 G. 2. c. 28. wool.
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13 G. 2. c. 17. apprentices.
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13 G. 2. c. 21. coalpits.

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26 G. 2. c. 13. alehouſes, exciſe, (ſpirits), poſt, tobacco.
26 G. 2. c. 14. juſtices.
26 G. 2. c. 19. county rate, ſhips, wreck.
26 G. 2. c. 27. baſtards, juſtices, poor.
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31 G. 2. c. 42. black act.
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32 G. 2. c. 17. exciſe.
32 G. 2. c. 18. bread.
32 G. 2. c. 19. wine.
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32 G. 2. c. 28. county rate, debtors, gaol, ſheriff.
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1 G. 3. c. 7. exciſe (ale).
1 G. 3. c. 13. juſtices.
2 G. 3. c. 5. exciſe (ſpirits).
2 G. 3. c. 8. windows.
2 G. 3. c. 14. alehouſes.
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2 G. 3. c. 19. game.
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2 G. 3. c. 22. poor.
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2 G. 3. c. 35. militia.
2 G. 3. c. 36. ſtamps.
3 G. 3. c. 8. apprentices, poor, ſeamen, ſoldiers.
3 G. 3. c. 11. bread.
3 G. 3. c. 12. exciſe (vinegar).
3 G. 3. c. 13. exciſe (malt).
3 G. 3. c. 16. churchwardens, ſeamen.
3 G. 3. c. 21. ſilks.
3 G. 3. c. 22. exciſe (ſpirits).
4 G. 3. c. 10. recognizance.
4 G. 3. c. 12. rivers and navigation.
4 G. 3. c. 14. fire in London.
4 G. 3. c. 16. infants.
4 G. 3. c. 17. militia.
4 G. 3. c. 24. poſt.
4 G. 3. c. 25. forgery.
4 G. 3. c. 31. wood.
4 G. 3. c. 33. bankrupt.
4 G. 3. c. 36. hackney coaches.
4 G. 3. c. 37. bankrupt, exciſe, linen.
5 G. 3. c. 10. cattle.
5 G. 3. c. 14. game.
5 G. 3. c. 25. poſt.
5 G. 3. c. 34. militia.
5 G. 3. c. 35. ſtamps.
5 G. 3. c. 36. militia.
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5 G. 3. c. 43. cattle exciſe (ale, candles, coffee, leather, ſalt, ſoap, ſtarch), tobacco.
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SINCE

SINCE this book went to the preſs, the ſtatutes of the 9 Geo. 3. have been publiſhed; by which the following alterations have been made.

Alehouſes.

THE clauſe in the act of 7 & 8 *W.* *c.* 19. reſtraining perſons keeping inns, alehouſes, taverns, or victualling-houſes, from uſing veſſels of plate in their houſes, is repealed; by the 9 G. 3. *c.* 11.

Apprentices.

Further time is allowed, for payment of the duties on money given with apprentices; provided the ſaid duties be paid, and the indentures be tendred to be ſtamped, on or before Sept. 29. 1769. By the 9 G. 3. *c.* 37.

Bricks and Tiles.

By the 12 G. *c.* 35. and 2 G. 2. *c.* 15. and 3 G. 2. *c.* 22. there were divers regulations concerning the true making of bricks and tiles, as well throughout the kingdom in general, as more particularly within 15 miles of the city of London: All of which expired in the year 1733. Theſe acts, by the 9 G. 3. *c.* 37. are revived, and enacted to be in force from Dec. 25. 1769, to the end of the next ſeſſions of parliament. By which ſhort time of continuance it ſeemeth to be intended, that the conſideration of this matter ſhall be reſumed in the next ſeſſion of parliament, and further regulations provided. For which reaſon, it is omitted here to inſert the ſubſtance of the ſaid three acts, eſpecially they being ſomewhat large, and not likely to exiſt long in their preſent form.

Butter.

By the 9 G. 3. *c.* 9. Salted beef, pork, bacon, and butter may be imported from Ireland till Feb. 1. 1770.

Cattle.

To prevent contagious diſtempers amongſt the horned cattle, it ſhall be lawful for the king, his heirs or ſucceſſors, as often

often as he or they ſhall find it neceſſary, by proclamation with the advice of his privy council, or by his order in council, to be publiſhed in the London gazette, to prohibit generally, or from any particular country or countries, the importation of any hides or ſkins, horns or hoofs, or any other part of any cattle or beaſt, into Great Britain or Ireland, for ſuch time, and under ſuch rules, orders, and regulations, as he or they by the advice aforeſaid ſhall judge moſt expedient. 9 *G.* 3. *c.* 39.

Coalworks.

If any perſon ſhall wilfully or maliciouſly ſet fire to, burn, demoliſh, pull down, or otherwiſe deſtroy or damage, any firſt engine, or other engine erected for draining water from collieries or coal mines, or for drawing coals out of the ſame; or any bridge, waggon way, or trunk, erected for conveying coals from any colliery or coal mine, or ſtaith for depoſiting the ſame; or ſhall cauſe or procure the ſame to be done; he ſhall be guilty of felony, and tranſported for ſeven years. Proſecution to be commenced within 18 months.

Corn.

By the 9 *G.* 3. *c.* 1. (which is to continue in force till the 20th day after the commencement of the next ſeſſion of parliament) no perſon ſhall export any corn, grain, meal, malt, flour, bread, biſcuit, or ſtarch; on pain of forfeiting the ſame, together with the ſhip and tackle, and alſo 20 s. for each buſhel of corn, grain, malt, meal, or flour, and 12 d. for each pound weight of bread, biſcuit, or ſtarch: To be recovered in the court of Weſtminſter or at the aſſizes, or by information at the general quarter ſeſſions for the place where the offence was committed. And the maſter or mariners, knowing the ſame, ſhall, on conviction in any the courts aforeſaid, be impriſoned for three months.

And the officers of the cuſtoms may ſeize any of the ſaid goods ſhipped contraray to the intent of this act, and lodge them in the king's warehouſes, in order to be proceeded againſt according to law.

But this ſhall not extend to ſuch of the ſaid goods, as ſhall be neceſſary for the uſe of veſſels in their voyages, or for his majeſty's ſhips of war, forces, or garriſons; nor to ſuch as ſhall be carried coaſtwiſe, ſecurity being given for the due landing thereof; nor to ſuch as ſhall be exported to Ireland, or the Britiſh colonies in America, ſecurity being given for the due landing thereof, and a certificate of the due landing thereof to be returned.

Nor to beans, nor wheat flour not exceeding 200 quarters, nor to bread or biſcuit not exceeding 15 tons, to the Britiſh forts in Africa.

Nor to any of the ſaid goods exported by the Eaſt India company to any of their forts, factories, or ſettlements, for the ſupport of the perſons reſiding there.

Nor

Nor to wheat, flour, malt, barley, bread, biſcuit, or peaſe, from Southampton only, to Jerſey, Guernſey, and Alderney, for the uſe of the inhabitants only, not exceeding 5000 quarters in the whole.

Nor to wheat, barley, oats, meal, or flour, from Whitehaven or Liverpool to the Iſle of Man, for the uſe of the inhabitants there, not exceeding in the whole 1250 quarters from each port. The like ſecurities to be given, and certificates returned. And no low wines or ſpirits (during the ſaid time) ſhall be extracted from wheat or wheat flour; on pain of forfeiting the ſame, and alſo 200 l. And the officers of exciſe may inſpect the materials, take ſamples, and ſeize the ſaid goods.

Exciſe and Cuſtoms.

Officers of exciſe may ſeize horſes, or other cattle, and carriages, made uſe of in carrying brandy, arrack, rum, ſpirits and ſtrong waters, (the cuſtoms and other duties not being firſt paid and ſecured), and proceed to condemnation thereof, in the ſame manner as officers of the cuſtoms may do. 9 *G.* 3. *c.* 6.

Exciſe. (Leather.)

By the 9 *G.* 3. *c.* 39. Raw or undreſſed hides of ſteers, cows, or any other cattle (except horſes, mares, and geldings), and raw or undreſſed ſkins of calves and goats, may be imported from Ireland or any of the Britiſh American colonies, duty free, for five years.

And the rates and duties payable by virtue of any former acts upon ſeal ſkins tanned or tawed within this kingdom, ſhall be no longer paid, but a duty of 1½d. a pound in lieu thereof. And 1 d. a pound on exportation ſhall be allowed in lieu of any other drawback.

Exciſe. (Spirituous liquors.)

Whereas by reaſon of the reſtrictive clauſe in the 5 *G.* 3. *c.* 46. requiring that perſons, ſelling ale or beer or *other exciſeable liquors* by retail without licence, ſhall, inſtead of the ſeveral pecuniary and corporal puniſhments inflicted by former acts, forfeit and undergo as by the ſaid act is directed, a doubt hath ariſen, whether the former powers relating to the puniſhment of perſons ſelling ſpirituous liquors by retail without licence are ſuperſeded; it is enacted and declared, that the laws relating to the ſelling of ſpirituous liquors without licence ſhall not be altered thereby: Provided that all powers given by former acts to juſtices of the peace and commiſſioners of exciſe of tranſporting or whipping perſons, convicted of retailing ſpirituous liquors without licence, ſhall ceaſe and be no longer put in force. 9 *G.* 3. *c.* 6.

Incloſures pulling down.

If any perſon ſhall wilfully or maliciouſly demoliſh, pull down, or otherwiſe deſtroy or damage, any fence made for dividing or incloſing any common waſte or other lands or grounds in purſuance of any act of parliament, or ſhall cauſe or procure the ſame to be done; he ſhall be guilty of felony, and tranſported for ſeven years. Proſecution to be commenced within eighteen months after the offence committed. 9 G. 3. c. 29.

Land tax.

On the death or removal of the commiſſioners clerks, into whoſe cuſtody the duplicates of the ſeveral books of aſſeſſments, minute books, and other books and papers relating to the land tax have been delivered; ſuch clerk ſo removed, or the executors or adminiſtrators of ſuch clerks dying, ſhall within one kalendar month after notice in writing ſigned by three or more commiſſioners, or a true copy thereof given to or left at the uſual place of abode of ſuch perſon or perſons, deliver up all ſuch books and papers to ſuch perſon as the ſaid commiſſioners ſhall by ſuch notice appoint: on pain of 50 l. with full coſts; half to the receiver general in aid of the land tax, and half to him who ſhall ſue. 9 G. 3. c. 14.

Militia.

The militia act of 2 G. 3. c. 20. and the ſeveral other acts conſequent thereupon are made perpetual; with the following alterations:

The qualification, in the larger counties, ſhall be; deputy lieutenant, 200 l. a year; or heir apparent to a perſon of 400 l. a year.

Colonel, 1000 l. a year; or heir apparent to a perſon of 2000 l. a year.

Lieutenant colonel, 600 l. a year; or heir apparent to a perſon of 1200 l. a year.

Major, or captain, 200 l. a year; or heir apparent to a perſon of 400 l. a year; or younger ſon of a perſon of 600 l. a year.

Lieutenant, 50 l. a year; or perſonal eſtate of 1000 l. or real and perſonal together of the value of 2000 l. or ſon of a perſon having 100 l. a year, or perſonal eſtate of 2000 l. or real and perſonal together of 3000 l.

Enſign, 20 l. a year; or perſonal eſtate of 500 l. or real and perſonal together of 1000 l. or ſon of a perſon having 50 l. a year, or perſonal eſtate of 1000 l. or real and perſonal together of 1500 l.

In the ſmaller counties,

Deputy lieutenant, 150 l. a year; or heir apparent to a perſon of 300 l. a year.

Colonel, 600 l. a year, or heir apparent to a perſon of 1200 l. a year.

Lieutenant colonel, or major commandant, 400 l. a year; or heir apparent to a perſon of 800 l. a year.

Major, or captain, 150 l. a year; or ſon of a perſon of 300 l. a year.

Lieutenant, 30 l. a year; or perſonal eſtate of 600 l. or real and perſonal together of 1200 l. or ſon of a perſon having 60 l. a year, or perſonal eſtate of 1200 l. or real and perſonal together of 2400 l.

Enſign, 20 l. a year; or perſonal eſtate of 300 l. or real and perſonal together of 600 l. or ſon of a perſon having 30 l. a year, or perſonal eſtate of 600 l. or real and perſonal together of 1200 l.

In the iſle of Ely,

Deputy lieutenant, 150 *l.* a year; or heir apparent to a perſon of 300 l. a year.

Captain, 100 l. a year; or heir apparent to a perſon of 200 l. a year; or younger ſon of a perſon of 300 l. a year.

Lieutenant, 30 l. a year; or perſonal eſtate of 600 l. or ſon of a perſon having 60 l. a year, or perſonal eſtate of 1200 l.

Enſign, 20 l. a year; or perſonal eſtate of 300 l. or ſon of a perſon having 30 l. a year, or perſonal eſtate of 600 l.

In cities or towns being counties of themſelves,

Deputy lieutenant, 150 l. a year; or perſonal eſtate alone, or real and perſonal eſtate together, of the value of 3000 l.

Field officer, 300 l. a year; or perſonal eſtate alone, or real and perſonal eſtate together, of the value of 5000 l.

Captain, 150 l. a year; or perſonal eſtate alone, or real and perſonal eſtate together, of the value of 2500 l.

Lieutenant, 30 l. a year; or perſonal eſtate of 750 l.

Enſign, 20 l. a year; or perſonal eſtate of 400 l.

But the adjutant may be lieutenant or enſign, although he have not ſuch qualifications as above.

And theſe qualifications here mentioned ſhall not extend to officers now ſerving in the militia, but the ſaid officers may continue to ſerve under the qualification by the former acts.

And the clerk of the peace ſhall annually in the month of January tranſmit to a ſecretary of ſtate an account of the qualifications left with him, and the ſecretary ſhall cauſe copies thereof annually to be laid before both houſes of parliament.

Towards inforcing the payment of 5 l. for each man, in thoſe counties and places, where the militia are not raiſed, it is enacted, that where no certificate from the lieutenant or deputy lieutenants ſhall be delivered to the clerk of the peace,

as by the former acts of the militia having been raiſed; he ſhall, at the Chriſtmas ſeſſions certify the ſame to the juſtices under his hand and ſeal, on the day the ſeſſions ſhall be opened; and ſhall file the ſame amongſt the records.

And the juſtices at ſuch ſeſſions ſhall rate and levy the ſaid ſum, in like manner as the county rate.

But officers who have ſerved four years, or ſhall be ſerving, or perſons who by writing under their hand ſhall offer to ſerve, ſhall be exempted; on ſuch perſon's filing with the clerk of the peace a certificate of his ſervice or offering to ſerve, and delivering a roll of his tenants and farmers, and the places of their abode; the ſame to be certified by the clerk of the peace to the treaſurer and high conſtables, who ſhall tranſmit the ſame to the petty conſtables, that ſuch perſons may be exempted accordingly.——And the lieutenant ſhall without delay grant ſuch certificate of ſervice; and the ſaid lieutenant, juſtice of the peace, chief magiſtrate or other perſon, to whom ſuch offer of ſervice ſhall be made, ſhall in like manner grant a certificate thereof.

Tenants may deduct the ſame out of their rent, except where there is a convenant to the contrary, or the lands are not let at rack rent.

Where a county and city are joined in the militia, they ſhall each pay according their quota's to the land tax; unleſs the number of men ſhall have been apportioned between them, and then they ſhall each pay according to their number of men: And where there is no county rate, the ſame ſhall be raiſed in like manner as the poor rate.

Where a town lies in two counties, they ſhall pay in that only where the church ſtands.

And where places not rated to the county rate ſhall not pay to the treaſurer their proportion before the firſt of June; the juſtices at the Midſummer ſeſſions ſhall iſſue an order to the overſeers of the poor to certify to the next Michaelmaſs ſeſſions, the quota's that each pariſh or place pays to the land tax; and the juſtices there ſhall by their warrant cauſe the conſtable to levy the ſame on the goods of the churchwardens or overſeers, who ſhall be reimburſed as by a poor rate.

The money, when raiſed, to be paid by the treaſurer within one month to the receiver general; who ſhall in ten days certify the ſame to the treaſury, and forthwith pay the money into the exchequer, to be applied yearly as the parliament ſhall direct.

Receiver general to be allowed 2 d. in the pound; treaſurer 1 d. high conſtables, 1 d. petty conſtables, churchwardens or overſeers, 1 d.

And within 14 days after the aforeſaid Chriſtmaſs ſeſſions yearly, the clerk of the peace ſhall certify to the treaſury and to the receiver general of the land tax, that no certificate of the militia having been raiſed hath been delivered to him,

and

and what proceedings have been had thereupon at the ſaid ſeſſions, in relation to aſſeſſing and raiſing the ſum of 5 l. for each man. And if the juſtices at ſuch ſeſſions ſhall not proceed, he ſhall within 14 days certify to the ſolicitor of the treaſury ſuch omiſſion, and the names of the juſtices; and the ſaid ſolicitor ſhall forthwith proceed to compel the juſtices to inforce the payment.

And if the ſaid ſum ſhall not be paid into the exchequer, or any perſon ſhall refuſe payment of his proportion, the treaſurer, conſtable, or other perſon to whom the default ſhall be made, ſhall within 14 days certify the ſame in writing ſigned by him, with the cauſe thereof, to the clerk of the peace; who ſhall (on pain of 200 l. and his office, and being incapacitated) within 14 days after certify the ſame to the ſolicitor of the treaſury; who ſhall forthwith proceed to compel the payment.

Clerk of the peace neglecting his duty in relation to the aforeſaid certificates, and alſo the ſolicitor of the treaſury neglecting his duty, ſhall forfeit 500 l. and his office, and be incapacitated; receiver general, 200 l. chief conſtable 50 l. petty conſtable, 20 l.

And where the militia has not been raiſed, an annual meeting ſhall be held of the lieutenant and deputy lieutenants, on the ſecond Tueſday in March; and if no ſuch meeting ſhall be held on that day, then a general meeting ſhall be ſummoned.

If any perſon ſerving in the regular forces ſhall offer himſelf as a ſubſtitute in the militia, or any perſon ſerving in the militia ſhall offer himſelf as a ſubſtitute in the militia elſewhere; he ſhall, on proof thereof upon oath before one juſtice, forfeit 10 l. to be levied by diſtreſs: for want of diſtreſs, to be committed to the common gaol for three months.

In the returns to be made to a ſecretary of ſtate by the commanding officer, ſhall be ſpecified the number of days on which each of the commiſſioned officers was preſent during the time of annual exerciſe; and the ſecretary ſhall cauſe copies thereof to be laid before both houſes of parliament.

Finally, by the 9 *G.* 3. *c.* 40. Where, before, the pay for contingent expences was paid to the ſeveral captains for their reſpective companies, the ſame now ſhall be paid to the colonel or commanding officer, for defraying the hoſpital expences of the ſeveral companies; and ſuch ſums alſo ſhall be iſſued and paid, as may be neceſſary for the repair of arms, and the carriage and removal thereof, as ſhall be ordered in writing by the ſaid colonel or commanding officer; and the reſidue ſhall be diſpoſed for the general uſe of the regiment or battalion, in ſuch manner as the field officers and captains or the greater part of them ſhall direct. And the commanding officer ſhall, within 30 days after finiſhing the exerciſe, tranſmit to the auditor of the exchequer a return of the officers and private men who did ſerve at the ſaid exerciſe.

Mills deſtroying.

If any perſon or perſons, unlawfully, riotouſly and tumultuouſly aſſembled, to the diſturbance of the publick peace, ſhall unlawfully and with force demoliſh or pull down, or begin to demoliſh or pull down, any wind ſaw mill, or other wind mill, or any water mill, or other mill, or any of the works thereto belonging; he ſhall be guilty of felony without benefit of clergy. 9 *G.* 3. *c.* 29. *ſ.* 1.

And if any perſon ſhall wilfully or maliciouſly burn or ſet fire to any wind ſaw mill, or other wind mill, or any water mill, or other mill; he ſhall be guilty of felony without benefit of clergy. *ſ.* 2.

Proſecution to be commenced within 18 months after the offence committed. *ſ.* 4.

Mines deſtroying.

If any perſon ſhall wilfully or malicouſly ſet fire to, burn, demoliſh, pull down, or otherwiſe deſtroy or damage any fire engine or other engine erected for draining water from any mine of lead, tin, copper or other mineral; or any bridge or waggon way erected for conveying lead, tin, copper, or other mineral, from any ſuch mine; or ſhall cauſe or procure any of the ſame to be done; he ſhall be guilty of felony and tranſported for 7 years. Proſecution to be commenced in 18 months after the offence committed. 9 *G.* 3. *c.* 29.

Office.

Perſons having omitted to qualify themſelves for offices, ſhall be indemnified (if their place is not filled up), provided they qualify on or before Dec. 25. 1769. 9 *G.* 3. *c.* 12.

Poor. (Settlement.)

No perſon who ſhall be admitted into the Magdalen hoſpital (for the reception of penitent proſtitutes), or who ſhall be employed in the ſaid hoſpital as an hired ſervant, ſhall, by reaſon of ſuch admittance or ſervice, gain any ſettlement in the pariſh in which the ſaid hoſpital is or ſhall be ſituate. 9 *G.* 3. *c.* 31.

Poor. (Relief.)

If any churchwarden or overſeer, or perſon authorized by him, ſhall wilfully and knowingly make any payments to the poor in any baſe or counterfeit money, or in any other than lawful money of Great Britain; one juſtice, on complaint, may ſummon the offender, and on his non-appearance, or confeſſion, or proof of the offence by the oath of one witneſs, adjudge him to forfeit not leſs than 10 s. nor more than 20 s. to be levied by diſtreſs, and to be applied to the uſe of any poor perſon or perſons

ſons of the pariſh or place reſpectively, as the juſtice ſhall appoint. 9 G. 3. c. 37.

Seamen.

It ſhall be lawful for the treaſurer, comptroller, ſurveyor, clerk of the acts, or any commiſſioner of the navy, to act as juſtices, in cauſing any perſon charged with forging or counterfeiting, or procuring to be forged or counterfeited, any letter of attorney, bill, ticket, certificate, aſſignment, laſt will, or other power or authority, or with uttering or publiſhing the ſame as true, in order to receive any wages, pay, or other allowance, due to any officer, ſeaman, or other perſon in his majeſty's ſervice, or with taking or procuring falſe oaths to be taken, for any the purpoſes aforeſaid, or to obtain a probate of any will, or letters of adminiſtration, in order to receive ſuch wages, pay or allowance, or with ſtealing or imbezilling any of his majeſty's naval ſtores, to be apprehended, committed, and proſecuted for the ſame; and the conſtables, gaolers, and other officers, ſhall obey their warrants accordingly. 9 G. 3. c. 30. ſ. 5.

And if any perſon ſhall knowingly utter or publiſh, as true any falſe, forged or counterfeited letter of attorney, bill, ticket, certificate, aſſignment, laſt will, or other power or authority, in order to receive any wages, pay or other allowances of money or prize money, due or ſuppoſed to be due to any officer or ſeaman, or other perſon, who ſhall have ſerved on board any of his majeſty's ſhips or veſſels, with intent to defraud any perſon; he ſhall be guilty of felony without benefit of clergy. ſ. 6.

Shire hall.

The juſtices in ſeſſions, on preſentment of the grand jury, at the aſſizes, of the ill ſtate and condition of the ſhire hall, or other building commonly uſed for holding the aſſizes, and the neceſſity of repairing the ſame, may order it to be repaired in ſuch manner as they ſhall think fit, and the money to be levied as for other county rates. 9 G. 3. c. 20. ſ. 1.

And if there be occaſion for ſudden repairs, which will not coſt more than 30 l. two juſtices, after having viewed the ſame, and an eſtimate having been made by able workmen of the expence thereof, may order it to be repaired, and the money to be levied as aforeſaid, without any preſentment by a grand jury. ſ. 3.

Provided, that where the ſame hath for time out of mind been repaired at the expence of any particular places or perſons; or any particular places or perſons are bound by law and ancient uſage to furniſh the ſame with benches, tables, rails, or other fixtures; they ſhall continue liable as before. ſ. 2, 4.

Wood.

Every perſon who ſhall, without legal authority, by night or day, cut down, deſtroy, take, carry, or convey away, any hollies, thorns, or quickſets, growing or being upon any of his majeſty's foreſts or chaſes, or within the woods or wood grounds of any of his majeſty's ſubjects; or ſhall have in his cuſtody or poſſeſſion any ſuch hollies, thorns, or quickſets, and not give a ſatisfactory account how he came by the ſame; ſhall be proceeded againſt and forfeit in all reſpects, as for deſtroying wood, underwood, poles, ſticks of wood, green ſtubs, or young trees, or having the ſame in his cuſtody and not giving a good account thereof. 9 G. 3. c. 41.

FINIS.

